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*El. Inrijyah*

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**D. Wilks,  
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AL SIRAJIYYAH:

OR,

THE MOHAMMEDAN LAW

OF

INHERITANCE,

WITH A

COMMENTARY,

BY SIR WILLIAM JONES.

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## THE PREFACE.

THE two *Muselman* authors, whom I now introduce to my countrymen in *India*, are *Sbaikh* SIRĀJU'DDĪN, a native of *Sejāvend*, and *Sayyad* SHARĪF, who was born at *Jurjān* in *Kbwārezm* near the mouth of the *Oxus*, and is said to have died, at the age of seventy-six years, in the city of *Sbirāz*: their compositions have equal authority in all the *Mohammedan* courts, which follow the system of ABŪ HANĪFAH, with those of LITTLETON and COKE in the courts at *Westminster*; and there is, indeed, a wonderful analogy between the works of the old *Arabian* and *English* lawyers, and between those of their several commentators; with this difference in favour of our own country, that LITTLETON is always too clear to need a gloss, and with this difference in favour of the *Arabs*, that the sole object of SHARĪF was to explain and illustrate his text, without an ostentatious display of his own erudition; but, when it is admitted, that a desire of extreme brevity has often made the *Sirājiyyab* obscure, the reader should in candour allow, that every author must appear to

great disadvantage in a literal translation, especially when his own idiom differs totally from that of his translator, when his terms of art must be rendered by new words, which use alone can make easy, and when the system, which he unfolds to his countrymen, has no resemblance to any other, that the world ever knew. In the *Sharifiyyab* (for that is the popular title of the *Arabian* comment) we find little or no obscurity; and, if there be a fault in the book, it is a scrupulous minuteness of explanation, and a needless anxiety to remove every little cloud, which the reader himself might disperse by the slightest exertion of his intellect. Both works were translated into *Persian* by the order of Mr. HASTINGS; and the translation, which bears the name of *Maulavi MUHAMMED KASIM*, must appear excellent, and would be really useful, to such as had not access to the *Arabick* originals; but the text and comment are blended without any discrimination, and both are so intermixed with the notes of the translator himself, that it is often impossible to separate what is fixed law from what is merely his own opinion: he has also erred (though it be certainly a pardonable error) on the side of clearness, and has made his work so tediously perspicuous, that it fills, inclusively of a turgid and flowery dedication, about six hundred pages, and a faithful version of it in *English* would occupy a very large volume.

IF the pains, which have been taken to render my own work as complete as possible, be measured by the size of it, they must be thought very inconsiderable; but in truth no greater pains could have been taken with any work; and it would have been a far easier task to have dictated or written a verbal translation of the two comments on my text, than to have made a careful selection of all that is important in them; for which purpose I perused each of them three times with the utmost attention, and have condensed in little more than fifty short pages the substance of them both, without any superfluous passage, that I should wish to be retrenched, and with as much perspicuity as I was able to give, in so short a compass, to a system in some parts rather abstruse: lest men of business, for whom the book is intended, should be alarmed at first sight by the magnitude of it, I have omitted all the minute criticism, various readings, and curious *Arabian* literature; most of the anecdotes concerning old lawyers, and all their subtil controversies with the arguments on both sides; together with the demonstrations of arithmetical rules and the very long processes, after the prolix method of the *Arabs*, in words instead of figures. Practical utility being my ultimate object in this work, I had nothing to do with literary curiosities, how agreeable soever they might have been in their proper places; but, in order to attain that object by a full explanation

of every thing useful in my text, I was under a necessity of retaining the *Arabian* phraseology both in law and arithmetick, and must request the *English* reader to dismiss from his mind, while he studies the *Sirájíyyah*, those appropriated senses, in which many of our words, as *heir*, *inheritance*, *root*, and the like, are used in our own systems. One *Arabick* word I was at a loss to translate precisely in our language without circumlocution: the chief problem, in the distribution of estates among *Muselman* heirs, is *to find the least number, by which an estate must be divided, so that all the shares and the residue may be legally distributed without a fraction*: this they call *integration*; but, if I could have hazarded such a word in *English*, the frequent repetition of it would have been extremely harsh; and I have generally called it *arrangement* or *verification*, which are popular senses of the *Arabick* verbal noun; but the number sought, or, to use the *Arabian* expression, *the integrant of the case*, I have usually named the *divisor* of the estate.

It will be seen in the *Sirájíyyah*, that the system of ZAID, though in part exploded by ABU HANIFAH, had very powerful supporters, and its author is always mentioned in terms of respect: it is the system, which I published at *London* above ten years ago; and I am not surprised, that, without a native assistant or even a marginal gloss, I could not then interpret the many technical words, which no dictionary explains, except in

their popular senses; but, though my literal version of the tract by ALMUTAKANNA, seems for pages together like a string of enigmas, yet the following work makes every sentence in it perfectly clear; and the original, which was engraved from a very old manuscript, appears to be a lively and elegant epitome of the law of inheritance according to ZAID, but manifestly designed to assist the memory of young students, who were to get it by heart, when they had learned the rules from some longer treatise, or from the mouths of their preceptors. This may be no improper place to inform the reader, that, although ABU HANĪFAH be the acknowledged head of the prevailing sect, and has given his name to it, yet so great veneration is shown to ABU YŪSUF and the lawyer MUHAMMED, that, when they *both* dissent from their master, the *Muselman* judge is at liberty to adopt either of the two decisions, which may seem to him the more consonant to reason and founded on the better authority.

I AM strongly disposed to believe, that no possible question could occur on the *Mohammedan* law of succession, which might not be rapidly and correctly answered by the help of this work; but it would be easy to confirm or invalidate my opinion by the following method. Let one capital letter, or more, if necessary, represent each of the sharers, residuaries, and distant heirs; and let those letters be the initials of the several words, in aid of the memory, but so chosen (as with

out difficulty they may be) that all may be different; let them be placed in alphabetical order, and connected by the sign of addition; let an enumeration be then made, by the known rule, of all the possible cases, in which they can occur, two and two, three and three, and so forth; let them accordingly be arranged in tables from the lowest number to the highest; and let the share or allotment of each be set above the letter, in the place of an exponent. If the question then were proposed, in what manner the property of HINDA must be distributed among her *daughter*, her *sister by the same father only*, and the *daughter of her son*, the table of the *third* class would exhibit this formula  $D^{\frac{2}{3}} + DF^{\frac{2}{3}} + DS^{\frac{1}{3}}$ ; or, if AMRU had left his *wife, two daughters*, and *both his parents*, the formula in the *fourth* table would be  $2 D^{\frac{16}{17}} + F^{\frac{4}{17}} + M^{\frac{4}{17}} + W^{\frac{3}{17}}$ ; where the denominator of the index would be the *integrant*, as the *Arabs* call it, *of the case*, and the numerator would point out the several allotments: thus might we construct a set of tables, mathematically accurate, in which the legal distribution, in every possible case, might be seen in a moment without thought and even without learning; and such a blind facility, though not very consistent with the dignity of science, would certainly be convenient in practice. We might also arrange the whole in a synthetic method (of all the most luminous and satisfactory) by beginning with the *sentences* of the *Korān*, as with indubitable axioms, followed by the genuine oral *maxims*

of MUHAMMED; by subjoining the *points*, on which all the learned have at length agreed, and by concluding with *cases* deduced from those three sources of juridical knowledge, to which there should be constant references by numbers in the manner of geometers: this method I propose to adopt in the Digest, from which I have separated the *Sirajiyah*, because it seemed worthy of being exhibited entire, and may be considered as Institutes of *Arabian Law* on the important title, mentioned by the *British* legislature, of *inheritance and succession to lands, rents, and goods*.

UNLESS I am greatly deceived, the work, now presented to the publick, decides the question, which has been started, *whether, by the Mogul constitution, the sovereign be not the sole proprietor of all the land in his empire, which he or his predecessors have not granted to a subject and his heirs*; for nothing can be more certain, than that *land, rents, and goods* are, in the language of all *Mohammedan* lawyers, *property alike alienable and inheritable*; and so far is the sovereign from having any right of *property* in the goods or lands of his people, that even *escheats* are never appropriated to his use, but fall into a fund for the relief of the poor. SHARIF expressly mentions *fields* and *houses* as inheritable and alienable property: he says, that a *house*, on which there is a lien, shall not be sold to defray even funeral expenses;

that, if a man dig a well in *his own field*, and another man perish by falling into it, he incurs no guilt; but, if he had trespassed on *the field of another man*, and had been the *occasion* of death, he must pay the price of blood; that *buildings and trees* pass by a sale of *land*, though not conversely; and he always expresses what we call *property* by an emphatical word implying *dominion*. Such *dominion*, says he, may be acquired by the act of *parties*, as in the case of *contracts*, or, by the act of *law*, as in the case of *descents*; and, having observed, that *freedom is the civil existence and life of a man*, but *slavery, his death and annihilation*, he adds, *because freedom establishes his right of property, which chiefly distinguishes man from other animals and from things inanimate*; so that he would have considered *subjects without property* (which, as he says in another place, *comprises every thing that a man may sell, or give, or leave for his heirs*) as *mere slaves without civil life*: yet SHARIF was beloved and rewarded by the very conqueror, from whom the imperial house of *Debli* boasted of their descent. The *Korân* allots to certain kindred of the deceased specifick shares of *what he left*, without a syllable in the book, that intimates a shade of distinction between realty and personalty; there is therefore no such distinction, for interpreters must make none, where the law has not distinguished: as to MUHAMMED, he says in positive words, *that if a man leave either property, or rights, they*



go to his heirs; and SHARIF adds, *that an heir succeeds to his ancestor's estate with an absolute right of ownership, right of possession, and power of alienation.* Now I am fully persuaded, that no *Muselman* prince, in any age or country, would have harboured a thought of controverting these authorities. Had the doctrine lately broached been suggested to the ferocious, but politick and religious, OMAR, he would in his best mood have asked his counsellor sternly, whether he imagined himself wiser than God and his Prophet, and, in one of his passionate sallies, would have spurned him as a blasphemer from his presence, had he been even his dearest friend or his ablest general: the placid and benevolent ALI would have given a harsh rebuke to such an adviser; and AURANGZIB himself, the bloodiest of assassins and the most avaricious of men, would not have adopted and proclaimed such an opinion, whatever his courtiers and slaves might have said, in their zeal to aggrandize their master, to a foreign physician and philosopher, who too hastily believed them, and ascribed to such a system all the desolation, of which he had been a witness. Conquest could have made no difference; for, either the law of the conquering nation was established in *India*, or that of the conquered was suffered to remain: if the first, the *Koran* and the *dicta* of MUHAMMED were fountains, too sacred to be violated, both of publick and private law; if the second, there is an end of the debate; for the old *Hindus* most asu-

redly were absolute proprietors of their land, though they called their sovereigns Lords of the Earth; as they gave the title of Gods on Earth to their *Brábmens*, whom they punished, nevertheless, for *theft* with all due severity. Should it be urged, that, although an *Indian* prince may have no right, in his *executive* capacity, to the land of his subjects, yet, as the sole *legislative* power, he is above control; I answer firmly, that *Indian* princes never had, nor pretended to have, an unlimited legislative authority, but were always under the control of laws believed to be divine, with which they never claimed any power of dispensing.

I AM happy in an opportunity of advancing these arguments against a doctrine, which I think unjust, unfounded, and big with ruin; for, in the course of nine years, I have seen enough of these provinces and of their inhabitants, to be convinced, that, if we hope to make our government a blessing to them and a durable benefit to ourselves, we must realize our hope, not by wringing for the present the largest possible revenue from our *Asiatick* subjects, but by taking no more of their wealth than the publick exigencies, and their own security, may actually require; not by diminishing the *interest*, which landlords must naturally take in *their own soil*, but by augmenting it to the utmost, and giving them assurance, that it will

descend to their heirs: when their laws of property, which they literally hold *sacred*, shall in practice be secured to them; when the land-tax shall be so moderate, that they cannot have a colourable pretence to rack their tenants, and when they shall have a well grounded confidence, that the proportion of it will never be raised, except for a time on some great emergency, which may endanger all they possess; when either the performance of every legal contract shall be enforced, or a certain and adequate compensation be given for the breach of it; when no wrong shall remain unredressed, and when redress shall be obtained at little expense, and with all the speed, that may be consistent with necessary deliberation; then will the population and resources of *Bengal* and *Babar* continually increase, and our nation will have the glory of conferring happiness on considerably more than *twenty-four* millions (which is at least the present number) of their native inhabitants, whose cheerful industry will enrich their benefactors, and whose firm attachment will secure the permanence of our dominion.

## D I R E C T I O N

### TO THE BOOKBINDER.

THE binder must take particular care to place the original *Arabick* after the Commentary, with the pages in an inverse order; so as to begin where an *English* book would end.

# AL SIRĀJIYYAH.



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T H E

# INTRODUCTION.

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IN THE NAME OF THE MOST  
MERCIFUL GOD!

**P**RAISE *be* to GOD, the Lord of *all* worlds;  
the praise of those who give *Him* thanks!  
And *His* blessing on the best of created beings,  
MUHAMMED, and his excellent family! The Pro-  
phet of GOD, (on whom be His blessing and peace!)  
said: "Learn the laws of inheritance, and teach them  
"to the people; for they *are* one half of useful know-  
"ledge." Our learned in the law (to whom GOD be  
merciful!) say: "There belong to the property of a per-  
"son deceased four successive duties *to be performed by*  
"*the magistrate*: first, his funeral ceremony and  
"burial without superfluity of expense, yet without  
"deficiency; next, the discharge of his just debts  
"from the whole of his remaining effects; then, the  
"payment of his legacies out of a third of what re-  
"mains after his debts *are* paid; and, lastly, the distri-  
"bution of the residue among his successors, according

B

“ to the Divine Book, to the Traditions, and to the Assent  
 “ of the Learned.” They begin with the persons entitled to shares, who are such as have each a specifick share allotted to them in the book of Almighty GOD; then they proceed to the residuary heirs by relation, and they are all such as take what remains of the inheritance, after those who are entitled to shares; and, if there be only residuaries, they take the whole property: next to residuaries for special cause, as the master of an enfranchised slave and his *male* residuary heirs; then they return to those entitled to shares according to their respective rights of consanguinity; then to the more distant kindred; then to the successor by contract; then to him who was acknowledged as a kinsman through another, so as not to prove his consanguinity, provided the deceased persisted in that acknowledgement even till he died; then to the person, to whom the whole property was left by will; and lastly to the publick treasury.

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#### ON IMPEDIMENTS TO SUCCESSION.

IMPEDIMENTS to succession *are* four; 1, servitude, whether it be perfect or imperfect; 2, homicide, whether punishable by retaliation, or expiable; 3, difference of religion; and, 4, difference of country, either actual, as between an alien enemy and an alien



tributary ; or qualified, as between a fugitive and a tributary, or between two fugitive enemies from two different states : now a state differs from another by having different forces and sovereigns, there being no community of protection between them.

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ON THE DOCTRINE OF SHARES, AND  
THE PERSONS ENTITLED TO THEM.

THE *furud*, or shares, appointed in the book of Almighty GOD, are six : a moiety, a quarter, an eighth, two thirds, one third, and a sixth, *some formed* by doubling, and *some* by halving. Now those entitled to these shares are twelve persons ; four males, who are the father and the true grandfather or other male ancestor, how high soever *in the paternal line*, the brother by the same mother, and the husband ; and eight females, who are the wife, and the daughter, and the son's daughter, or other female descendant how low soever, the sister by one father and mother, the sister by the father's side, and the sister by the mother's side, the mother, and the true grandmother, that is, she who is related to the deceased without the intervention of a false grandfather. (A false male ancestor is, where a female ancestor intervenes in the line of ascent). The father takes in three cases ;

1, an absolute share, which is a sixth, and that with the son, or son's son, how low soever; 2, a legal share, and a residuary portion also; and that with a daughter, or a son's daughter, how low soever in the degree of descent; 3. He has a simple residuary title, on failure of children and son's children, or other low descendants. The true grandfather has the same interest with the father, except in four cases, which we will mention presently, if it please GOD; but the grandfather is excluded by the father, *if he be living*; since the father is the mean of consanguinity between the grandfather and the deceased. The mother's children also take in three cases: a sixth is the share of one only; a third, of two, or of more: males and females have an equal division and right; but the mother's children are excluded by children of the deceased and by son's children, how low soever, as well as by the father and the grandfather; as the learned agree. The husband takes in two cases; half, on failure of children, and son's children, and a fourth, with children or son's children, how low soever they descend.

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#### O N W O M E N.

WIVES take in two cases; a fourth *goes* to one or more on failure of children, and son's children, how low

forever ; and an eighth with children or son's children, in any degree of descent. Daughters begotten by the deceased take in three cases : half *goes* to one only, and two thirds to two or more ; and, if there be a son, the male has the share of two females, and he makes them residuaries. The son's daughters are like the daughters begotten by the deceased ; and they may be in six cases : half goes to one only, and two thirds to two or more, on failure of daughters begotten by the deceased ; with a single daughter of the deceased, they have a sixth, completing, (*with the daughter's half*), two thirds ; but, with two daughters of the deceased, they have no share of the inheritance, unless there be, in an equal degree with, or in a lower degree than, them, a boy, who makes them residuaries. As to the remainder between them, the male has the portion of two females ; and all of the son's daughters are excluded by the son himself.

If a man leave three son's daughters, some of them in lower degrees than others, and three daughters of the son of another son, some of them in lower degrees than others, and three daughters of the son's son of another son, some of them in lower degrees than others, as in the following table, this is called the case of *taḥbīb*.

C

## FIRST SET.

Son,  
 |  
 Son, Daughter,  
 |  
 Son, Daughter,  
 |  
 Son, Daughter,

## SECOND SET.

Son,  
 |  
 Son,  
 |  
 Son, Daughter,  
 |  
 Son, Daughter,  
 |  
 Son, Daughter,

## THIRD SET.

Son,  
 |  
 Son,  
 |  
 Son,  
 |  
 Son, Daughter,  
 |  
 Son, Daughter,  
 |  
 Son, Daughter.

*Here* the eldest of the first line has none equal in degree with her ; the middle one of the first line is equalled in degree by the eldest of the second ; and the youngest of the first line is equalled by the middle one of the second, and by the eldest of the third line ; the youngest of the second line is equalled by the middle one of the third line, and the youngest of the third set has no equal in degree.—When thou hast comprehended this, then we say : the eldest of the first line has a moiety ; the middle one of the first line has a sixth together with her equal in degree to make up two thirds ; and those in lower degrees never take any thing, unless there be a son with them, who makes them residuaries, both her who is equal to him in degree, and her who is above him ; but who is not entitled to a share : those below him are excluded.

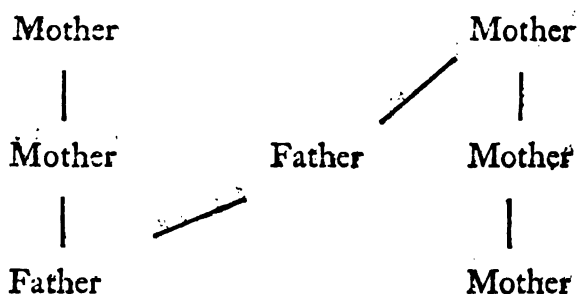
SISTERS by the same father and mother may be in five cases: half goes to one alone; two thirds to two or more; and, if there be brothers by the same father and mother, the male has the portion of two females; and the females become residuaries through him by reason of their equality in the degree of relation to the deceased; and they take the residue, when they are with daughters or with son's daughters, by the saying of Him, on whom be blessing and peace! "Make sisters, with daughters, residuaries."

SISTERS by the same father only are like sisters by the same father and mother, and may be in seven cases: half goes to one, and two thirds to two or more on failure of sisters by the same father and mother; and, with one sister by the same father and mother, they have a sixth, as the complement of two thirds; but they have no inheritance with two sisters by the same father and mother, unless there be with them a brother by the same father, who makes them residuaries; and then the residue is *distributed* among them *by the sacred rule* "to the male what is equal to the share of two females." The sixth case is, where they are residuaries with daughters or with son's daughters, as we have before stated *it*.

BROTHERS and sisters by the same father and mother, and by the same father only, are all excluded by the son and the son's son, in how low a degree soever, and by the father *also*, as it is agreed *among the learned*, and even by the grandfather according to ABU HANIFAH, on whom be the mercy of ALMIGHTY GOD! And those of the half-blood are also excluded by the brothers of the whole blood.

THE mother takes in three cases: a sixth with a child, or a son's child, even in the lowest degree, or with two brothers and sisters or more, by which ever side they are related; and a third of the whole on failure of those just-mentioned; and a third of the residue after the share of the husband or wife; and this in two cases, either when there are the husband and both parents, or the wife and both parents: if there be a grandfather instead of a father, then the mother takes a third of the whole property, though not by the opinion of ABU YUSUF, on whom be GOD's mercy! for he says, that in this case also she has only a third of the residue. The grandmother has a sixth, whether she be by the father or by the mother, whether alone or with more, if they be true grandmothers and equal in degree; but they are all excluded by the mother, and the paternal female ancestors also by the father; and, in like manner, by the grandfather,

except the father's mother, even in the highest degree ; for she takes with the grandfather, since she is not *related* through him. The nearest grandmother, *or female ancestor*, on either side, excludes the more distant grandmother, on whichever side she be ; whether the nearer grandmother be entitled to a share of the inheritance, or be herself excluded. When a grandmother has but one relation, as the father's mother's mother, and another has two such relations, or more, as the mother's mother's mother, who is also the father's father's mother, according to this table ;



then a sixth is divided between them, according to ABU YUSUF, in moieties, respect being had to their persons ; but, according to MUHAMMED, (on whom be GOD's mercy!) in thirds, respect being had to the sides.

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### ON RESIDUARIES.

RESIDUARIES by relation *to the deceased* are three : the residuary in his own right, the residuary in another's

D

right, and the residuary together with another. Now the residuary in his own right is every male, in whose line of relation to the deceased no female enters; and of this sort there are four classes; the offspring of the deceased; and his root; and the offspring of his father and of his nearest grandfather, a preference being given, I mean a preference in the right of inheritance, according to proximity of degree. The offspring of the deceased are his sons *first*; then their sons, in how low a degree soever: then *comes* his root, or his father; then his paternal grandfather, and their paternal grandfathers, how high soever; then the offspring of his father, or his brothers; then their sons, how low soever; and then the offspring of his grandfather, or his uncles: then their sons, how low soever. Then the strength of consanguinity prevails: I mean, he, who has two relations is preferable to him, who has only one relation, whether it be male or female, according to the saying of Him, on whom be peace! “ Surely, kinsmen by the same father and mother shall “ inherit before kinsmen by the same father only:” thus a brother by the same father and mother is preferred to a brother by the father only, and a sister by the same father and mother, if she become a residuary with the daughter, is preferred to a brother by the father only; and the son of a brother by the same father and mother is preferred



to the son of a brother by the same father only ; and the rule is the same in regard to the paternal uncles of the deceased ; and, after them, to the paternal uncles of his father, and, after them, to the paternal uncles of his grandfather.

THE residuaries in another's right are four females ; namely, those whose shares are half and two thirds, and who become residuaries in right of their brothers, as we have before mentioned in their different cases ; but she, who has no share among females, and whose brother is the heir, doth not become a residuary in his right ; as in the case of a paternal uncle and a paternal aunt.

AS to residuaries together with others : such is every female who becomes a residuary with another female ; as a sister with a daughter, as we have mentioned before. The last residuary is the master of a freedman, and then his residuary heirs, in the order before stated ; according to the saying of Him, on whom be blessing and peace ! “ The master bears a relation “ like that of consanguinity ; ” but females have nothing among the heirs of a manumittor, according to the saying of Him, on whom be blessing and peace ! “ Women have nothing from their relation to freed-  
men, except when they have themselves manumitted

“ a slave; or their freedman has manumitted one,  
 “ or they have sold a manumission to a slave, or  
 “ their vendee has sold it to his slave, or they have  
 “ promised manumission after their death, or their  
 “ promisee has promised it after his death, or unless  
 “ their freedman or freedman's freedman draw a relation  
 “ to them.”

IF the freedman leave the father and son of his manu-  
 mittor, then a sixth of the right over the property of the  
 freedman vests in the father, and the residue in the son,  
 according to *ABU YUSUF*; but, according to both  
*ABU HANIFAH* and *MUHAMMED*, the whole  
 right vests in the son; and, if a son and a grandfather of the  
 manumittor be left, the whole right over the freedman  
 goes to the son, as all the learned agree. When a man  
 possesses as his slave a kinsman in a prohibited degree, he  
 manumits him, and his right vests in him; as if there be  
 three daughters, the youngest of whom has twenty *dinàrs*,  
 and the eldest, thirty; and they two buy their father  
 for fifty *dinàrs*; and afterwards their father die leaving  
 some property; then two thirds of it are divided in thirds  
 among them, as their legal shares; and the residue goes  
 in fifths to the two who bought their father; three fifths  
 to the eldest and two fifths to the youngest; which may  
 be settled by dividing the whole into forty-five parts.

## ON EXCLUSION.

EXCLUSION is of two sorts : 1. *Imperfect*, or an exclusion from one share, and an admission to another; and this takes place in respect of five persons, the husband or wife, the mother, the son's daughter, and the sister by the same father; and an explanation of it has preceded. 2. *Perfect* exclusion : there are two sets of persons having a claim to the inheritance : one of which sets is not excluded entirely in any case ; and they are six persons, the son, the father, the husband, the daughter, the mother, and the wife ; but the other set inherit in one case and in another case are excluded. This is grounded on two principles ; one of which is, that " whoever is related to the deceased through any person, shall not inherit, while that person is living ;" as a son's son, with the son ; except the mother's children, for they inherit with her ; since she has no title to the whole inheritance : the second *principle* is, " that the nearest *of blood* must take," and who the nearest is, we have explained in the chapter on residuaries. A person incapable of inheriting doth not exclude any one, *at least* in our opinion ; but, according to IBNU MASUUD (may GOD be gracious to him !) he excludes imperfectly ; as an infidel, a murderer, and a slave. A person excluded

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may, as all *the learned* agree, exclude *others*; as, if *there* be two brothers or sisters or more, on which ever side they are, they do not inherit with the father of *the deceased*, yet they drive the mother from a third to a sixth.

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### ON THE DIVISORS OF SHARES.

KNOW, that the six shares mentioned in the book of Almighty GOD are of two sorts: of the first are a moiety, a fourth, and an eighth; and of the second sort are two thirds, a third, and a sixth, as the fractions are halved and doubled. Now, when any of these shares occur in cases singly, the divisor for each share is that number which gives it its name, (except half, which is from two) as a fourth denominated from four, an eighth from eight, and a third from three: when they occur by two or three, and are of the same sort, then each integral number is the proper divisor to produce its fraction, and also to produce the double of that fraction, and the double of that, as six produces a sixth, and likewise a third, and two thirds; but, when half, *which* is from the first sort, is mixed with all of the second sort or with some of them; then *the division of the estate must be by six*; when a fourth is mixed with all of the second sort

or with some of them, then the division must be into twelve; and when an eighth is mixed with all of the second sort, or with some of them, then it must be into four and twenty parts.

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### ON THE INCREASE.

**ÂUL**, or *increase*, is, when some fraction remains above the *regular* divisor, or when the divisor is too small to admit one share. Know, that the whole number of divisors is seven, four of which have no increase, namely, two, three, four, and eight; and three of them have an increase. The *divisor*, six, is, therefore, increased by the *âul* to ten, either by odd, or by even, numbers; twelve is raised to seventeen by odd, not by even, numbers; and twenty-four is raised to twenty-seven by one increase only; as in the case, called *Mimberiyya*, (or a case answered by **ALI** when he was in the pulpit) which was this, “*A man left a wife, two daughters, and both his parents.*” After this there can be no increase, except according to **IBN MASÛUD**, (may **GOD** be gracious to him!) for, in his opinion, the divisor twenty-four may be raised to thirty-one; as *if a man leave a wife, his mother, two sisters by the same parents, two sisters by the same mother only, and a son rendered incapable of inheriting.*

ON THE EQUALITY, PROPORTION, AGREEMENT, AND DIFFERENCE OF TWO NUMBERS.

THE *temáthul* of two numbers in the equality of one to the other ; the *tedákbul* is, when the smaller of two numbers exactly measures the larger, or exhausts it ; or we call it *tedákbul*, when the larger of two numbers is divided exactly by the smaller ; or we may define it thus, when the larger exceeds the smaller by one number or more equal to it, or equal to the larger ; or it is, when the smaller is an aliquot part of the larger, as three of nine. The *tarwófuk*, or agreement, of two numbers is, where the smaller does not exactly measure the larger, but a third number measures them both, as eight and twenty, each of which is measured by four, and they agree in a fourth ; since the number measuring them is the denominator of a fraction common to both. The *tabáyun* of two numbers is, when no third number whatever measures the two discordant numbers, as nine and ten. Now the way of knowing the agreement or disagreement between two different quantities is, that the greater be diminished by the smaller quantity on both sides, once or oftener, until they agree in one point ; and if they agree in unit only, there is no numerical agreement be-

tween them ; but, if they agree in any number, then they are (*said to be*) *mutawáfik* in a fraction, of which that number is the denominator ; if two, in half ; if three, in a third ; if four, in a quarter ; and so on, as far as ten ; and, above ten, they agree in a fraction ; I mean, if the number be eleven, the fraction of eleven, and, if it be fifteen, by the fraction of fifteen. Pay attention to this *rule*.

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### ON ARRANGEMENT.

IN arranging cases there is need of seven principles ; three, between the shares and the persons, and four between persons and persons. Of the three *principles* the first is, that, if the portions of all the classes be divided among them without a fraction, there is no need of multiplication, as *if a man leave* both parents and two daughters. The second is, that, if the portions of one class be fractional, yet there be an agreement between their portions and their persons, then the measure of the number of persons, whose shares are broken, must be multiplied by the root of the case, and its increase, if it be an increased case, as *if a man leave* both parents and ten daughters, or *a woman leave* a husband, both parents, and six daughters. The third *principle* is, that, if their portions leave a fraction, and there be no agree-

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ment between those portions and the persons, then the whole number of the persons, whose shares are broken, must be multiplied into the root of the case, as *if a woman leave* her husband and five sisters by the same father and mother. Of the four *other principles* the first is, that, when there is a fractional division between two classes or more, but an equality between the numbers of the persons, then the rule is, that one of the numbers be multiplied into the root of the case; as *if there be* six daughters, and three grandmothers, and three paternal uncles. The second is, when some of the numbers equally measure the others; then the rule is, that the greater number be multiplied into the root of the case; as, *if a man leave* four wives and three grandmothers and twelve paternal uncles. The third is, when some of the numbers are *mutawáfik*, or composit, with others; then the rule is, that the measure of the first of the numbers be multiplied into the whole of the second, and the product into the measure of the third, if the product of the third be *mutawáfik*, or, if not, into the whole of the third, and then into the fourth, and so on, in the same manner; after which the product must be multiplied into the root of the case: as, *if a man leave* four wives, eighteen daughters, fifteen female ancestors, and six paternal uncles. The fourth *principle* is, when the numbers



are *mutabayan*, or not agreeing one with another ; and then the rule is, that the first of the numbers be multiplied into the whole of the second, and the product multiplied by the whole of the third, and that product into the whole of the fourth, and the last product into the root of the case ; as, *if a man leave* two wives, six female ancestors, ten daughters, and seven paternal uncles.

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### S E C T I O N.

WHEN thou desirest to know the share of each class by arrangement, multiply what each class has from the root of the case by what thou hast already multiplied into the root of the case, and the product is the share of that class ; and, if thou desirest to know the share of each individual in that class by arrangement, divide what each class has from the principle of the case by the number of the persons in it, then multiply the quotient into the multiplicand, and the product *will be* the share of each individual in that class. Another method is, to divide the multiplied number by whichever class thou thinkest proper, then to multiply the quotient into the share of that set, by which thou hast divided the multiplied number, and the product *will be* the share of each individual in that set. Another method is by the way of proportion, which is the clearest ; and it is, that a proportion be ascertained for the

share of each class from the root of the case to the number of persons one by one, and that, according to such proportion from the multiplied *number*, a share be given to each individual of that class.

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### ON THE DIVISION OF THE PROPERTY LEFT AMONG HEIRS AND AMONG CREDITORS.

IF there be a disagreement between the property left and the *number arising from the arrangement*, then multiply the portion of each heir, according to that arrangement, into the aggregate of the property, and divide the product by the number of the arrangement, but, when there is an agreement between the arrangement and the property left, then multiply the portion of each heir, according to the arrangement into the measure of the property, and divide the product by the measure of the *number arising from the arrangement*: the quotient is the portion of that heir in both methods. This *rule* is in order to know the portion of each individual among the heirs; but, in order to know the portion of each class of them, multiply what each class has, according to the root of the case, into the measure of the property left, then divide the product by the measure of the case, if there be an agreement between

the property left and the case; but, if there be a disagreement between them, then multiply into the whole of the property left, and divide the product by the whole *number arising from the* verification of the case; and the quotient *will be* the portion of that class in both methods. Now, as to the payment of debts, the debts of all the creditors stand in the place of the arranging number.

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### ON SUBTRACTION.

WHEN any one agrees to take a part of the property left, subtract his share from *the number arising* by the proof, and divide the remainder of the property by the portions of those who remain; as *if a woman leave* her husband, her mother, and a paternal uncle: now *suppose that* the husband agrees to take what was in his power of his bridal gift to the wife; this is deducted from among *the heirs*: then what remains is divided between the mother and the uncle in thirds, according to their legal shares; and thus there will be two parts for the mother, and one for the uncle:

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### ON THE RETURN.

THE return is the converse of the increase; and it *takes place* in what remains above the shares of those en-

titled to them, when there is no legal claimant of it :  
 this *surplus* is returned to the sharers according to their  
 rights, except the husband or the wife; and this is the  
 opinion of all the *Prephet's* companions, as ÂLI and his  
 followers, may GOD be gracious to them ! And our mas-  
 ters (to whom GOD be merciful ! ) have assented to it :  
 ZAID, the son of THÁBIT says, that the surplus doth  
 not revert, but goes to the publick treasury; and to this  
 opinion have assented ÚRWAH and ALZUHRI and  
 MÁLIC and ALSHÁFI, may GOD be merciful to  
 them !

NOW the cases on this head are *in* four divisions :  
 the first of them *is*, when there is in the case but one  
 sort of kinsmen, to whom a return must be made, and  
 none of those who are not entitled to a return : then settle  
 the case according to the number of persons; as, when  
 the deceased has left two daughters, or two sisters, or two  
 female ancestors; settle it, therefore, by two. The se-  
 cond *is*, when there are joined in the case two or three  
 sorts of those, to whom a return must be made, without  
 any of those, to whom there is no return : then settle the  
 case according to their shares; I mean by two, if there be  
 two sixths in the case; or by three, when there are a third  
 and a sixth in it; or by four, when there are a moiety and a  
 sixth in it; or by five, when there are in it two thirds and  
 a sixth, or half and two sixths, or half and a third. The

third is, when in the first case, there is *any one* to whom no return can be made: then give the share of him or her, to whom there is no return, according to the lowest *denominator*, and if the residue exactly quadrate with the number of persons, who are entitled to a return, *it is well*; as *if there be* a husband and three daughters; but, if they do not agree, then multiply the measure *of the number* of the persons, if there be an agreement between the number of persons and the residue, into the denominator of the shares of those, to whom no return is to be made: as *if there be* a husband, and six daughters; if not, multiply the whole number of the persons into the denominator of the share of those, to whom there is no return; and the product will set the case right. The fourth is, when, in the second case, there are any to whom no return is made: then divide what remains from the denominator of the share of him or them, who have no return, by the case of those, to whom a return must be made, and, if the remainder quadrate, *it is well*; and this is in one form; that is, when a fourth goes to the wives, and the residue is *distributed* in thirds among those entitled to a return; as *if there be* a wife, and a grandmother, and two sisters by the mother's side: but, if it do not quadrate, then multiply the whole case of those, who are entitled to a return, into the denominator of the share of him or

her, who is not entitled to it; and the product will be the denominator of the shares of both classes; as *if there be* four wives, and nine daughters, and six female ancestors: then multiply the shares of those, to whom no return must be made, into the case of those, who are entitled to a return, and the shares of those, to whom a return is to be made, into what remains of the denominator of the share of those, who are not entitled to a return. If there be a fraction in some, adjust the case by the before-mentioned principles.

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### ON THE DIVISION OF THE PATERNAL GRANDFATHER.

ABUBECR the Just, (on whom be the grace of GOD!) and those, who followed him, among the companions *of the Prophet*, say, "the brethren of the whole blood and the brethren by the father's side inherit not with the grandfather:" this is also the decision of ABU HANÍFA, (on whom be GOD's mercy!) and judgments are given conformably to it. ZAID the son of THÁBIT, indeed, asserts, that they *do* inherit with the grandfather, and of this opinion are both ABU YUSUF and MUHAMMED, as well as MÁLIC and ALSHAFÍ. According to ZAID, the son of THÁBIT (on whom be

GOD's mercy!) the grandfather, with brothers or sisters of the whole blood and by the father's side, takes the best in two cases, from the *mukāṣamah*, or *division*, and from a third of the whole estate. The meaning of *mukāṣamah* is, that the grandfather is placed in the division as one of the brethren, and the brethren of the half blood enter into the division with those of the whole blood, to the prejudice of the grandfather; but, when the grandfather has received his allotment, then the half blood are removed from the rest, *as if disinherited*, and receive nothing; and the residue goes to the brethren of the whole blood; except when, among those of the whole blood there is a single sister, who receives her legal share, I mean the whole after the grandfather's allotment: then, if any thing remains, it goes to the half blood; if not, they have nothing; and this is the case, when a man leaves a grandfather, a sister by the same father and mother, and two sisters by the same father only: in this case there remains to those sisters a tenth of the estate, and the correct denominator is twenty; but, if there be, in the preceding case, one sister by the same father only, nothing remains for her; and if one, entitled to a legal share, be mixed with them, then, after he has received his share, the grandfather has the best in three arrangements; either the division,

when a woman leaves her husband, a grandfather, and a brother ; or a third of the residue is given, when a man leaves a grandfather, a grandmother, and two brothers, and a sister by the same father and mother. Or a sixth of the whole estate is given, when a man leaves a grandfather and a grandmother, a daughter, and two brothers ; and, when a third of the residue is better from the grandfather, and the residue has not a complete third, multiply the denominator of the third into the root of the case. If a woman leave a grandfather, her husband, a daughter, her mother, and a sister by the same father and mother, or by the same father only, then a sixth is best for the grandfather, and the root of the case is raised to thirteen, and the sister has nothing. Know, that ZAID, the son of THABIT (on whom be GOD's grace!) has not placed the sister by the same father and mother, or by the same father, as entitled to a share with the grandfather, except in the case, named *ad-dariyyah*, and that is, the husband, the mother, a grandfather, and a sister by the same father and mother, or by the same father only ; in which case the husband ought to have a moiety ; the mother, a third ; the grandfather, a sixth ; and the sister, a moiety ; then the grandfather annexes his share to that of the sister, and, a division is made between them by the rule " a male has the portion of two females ;" and this is, because the division is best for the grandfather.



The root is *regularly* six, but is increased to nine; and a correct distribution is made by twenty-seven. The case is called *acdar'yyah*, because it occurred on *the death* of a woman belonging to the tribe of ACDAR. If, instead of the sister, there be a brother or two sisters, there is no increase, nor *is that case* an *acdar'yyah*.

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### ON SUCCESSION TO VESTED INTERESTS.

IF some of the shares become vested in heritances before the distribution, as *if a woman leave* her husband, a daughter, and her mother, and the husband die, before the estate can be distributed, leaving a wife and both his parents, *if* then the daughter die leaving two sons, a daughter, and a *maternal* grandmother, and then the grandmother die leaving her husband and two brothers, the principle in this *event* is, that the case of the first deceased be arranged, and that the allotment of each heir be *considered* as delivered according to that arrangement; that, next, the case of the second deceased be arranged, and that a comparison be made between what was in his hands, *or vested in interest*, from the first arrangement, and between the second arrangement, in three situations; and if, on account of equality, what *is* in his hands from the first arrangement quadrate with the second arrangement, then there is no need of multiplication; but, if

It be not right, then see whether there be an agreement between the two, and multiply the measure of the second arrangement into the whole of the first arrangement; and, if there be a disagreement between them, then multiply the whole of the second arrangement into the whole of the first arrangement, and the product *will be* the denominator of both cases. The allotments of the heirs of the first deceased must be multiplied into the former multiplicand, I mean into the second arrangement or into its measure; and the allotments of the heirs of the second deceased must be multiplied into the whole of what *was* in his hands, or into its measure; and, if a third or a fourth die, put the second product in the place of the first arrangement, and the third case in the place of the second, in working; and thus in the case of a fourth and a fifth, and so on to infinity.

### ON DISTANT KINDEED.

A DISTANT kinsman is every relation, who is neither a sharer nor a residuary. The generality of the Prophet's companions repeat a tradition concerning the inheritance of distant kinsmen; and, according to this, our masters and their followers (may GOD be merciful to them!) have decided; but ZAID, the son of THABIT, (on whom be GOD's grace!) says: "there is no inhe-

“ritance for the distant kindred, but the property *undisposed of* is placed in the publick treasury”; and with him agree MALIC and ALSHAFII, on whom be GOD’s mercy! Now these distant kindred *are* of four classes: the first class is descended from the deceased; and they are the daughters’ children, and the children of the son’s daughters. The second sort *are* they, from whom the deceased descend; and they are the excluded grandfathers and the excluded grandmothers. The third sort are descended from the parents of the deceased; and they *are* the sisters’ children and the brothers’ daughters, and the sons of brothers by the same mother only. The fourth sort are descended from the two grandfathers and two grandmothers of the deceased; and they are, paternal aunts, and uncles by the same mother *only*, and maternal uncles and aunts. These, and all who are related to the deceased through them, are among the distant kindred. ABU SULAIMAN reports from MUHAMMED the son of ALHASAN, *who reported* from ABU HANIFAH (on whom be GOD’s mercy!) that the second sort are the nearest of the *four* sorts, how high soever they ascend; then the first, how low soever they descend; then the third, how low soever; and lastly, the fourth, how distant soever *their degree*: but ABU YUSUF and ALHASAN, the son of ZIYAD, report from ABU

HANĪFAH, (on whom be the mercy of GOD!) that the nearest of the *four* sorts is the first, then the second, then the third, then the fourth, like the order of the residuaries; and this *is* taken *as a rule* for decision. According to both *ABU YUSUF* and *MUHAMMED*, the third sort has a preference over the maternal grandfather.

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### ON THE FIRST CLASS.

THE best entitled of them to the succession is the nearest of them in degree to the deceased; as the daughter's daughter, who is preferred to the daughter of the son's daughter; and, if *the claimants* are equal in degree, then the child of an heir is preferred to the child of a distant relation; as the daughter of a son's daughter is preferred to the son of a daughter's daughter; but, if their degrees be equal, and there be not among them the child of an heir, or, if all of them be the children of heirs, then, according to *ABU YUSUF* (may GOD be merciful to him!) and *ALHASAN*, son of *ZIYAD*, the persons of the branches are considered, and the property is distributed among them equally, whether the condition of the roots, as male or female, agree or disagree; but *MUHAMMED* (on whom be GOD's mercy!) considers the persons of the branches, if the sex of the roots agree, *in which respect*

He concurs with the other two; and he considers the persons of the roots, if their sexes be different, and, he gives to the branches the inheritance of the roots, in opposition to the two *lawyers*. For instance, when *a man* leaves a daughter's son, and a daughter's daughter, *then*, according to ABU YUSUF and ALHASAN, the property is distributed between them, *by the rule* " the male has the portion of two females," their persons being considered; and, according to MUHAMMED, in the same manner; because the sexes of the roots agree: and, if *a man* leave the daughter of a daughter's son; and the son of a daughter's daughter, *then*, according to the two *first mentioned lawyers*, the property *is divided* in thirds between the branches, by considering the persons, two thirds of it *being given* to the male, and one third to the female; but, according to MUHAMMED, (on whom be GOD's mercy!) the property *is divided* between the roots, I mean *those* in the second rank, in thirds, two thirds *going* to the daughter of the daughter's son, *namely*, the allotment of her father, and one third of it to the son of the daughter's daughter, *namely*, the share of his mother. Thus, according to MUHAMMED, (to whom GOD be merciful!) when the children of the daughters are different *in sex*, the property is divided according to the first rank *that* differs among the roots; then the males are arranged

in one class, and the females in another class, after the division, and what goes to the males is collected and distributed according to the highest difference, that occurs among their children, and, in the same manner, what goes to the females; and thus the operation is continued to the end according to this scheme:

S	S	S	D	D	D	D	D	D	D	D	D	D
D	D	D	D	D	D	D	D	D	D	D	D	D
S	D	D	S	S	S	D	D	D	D	D	D	D
D	D	D	S	D	D	S	S	S	D	D	D	D
D	S	D	D	D	D	S	D	D	S	D	D	D
D	D	D	D	D	S	D	D	S	D	S	D	D

Thus MUHAMMED (to whom GOD be merciful !) takes the sex from the root at the time of the distribution, and the number from the branches ; as, *if a man* leave two sons of a daughter's daughter's daughter, and a daughter of a daughter's daughter's son, and two daughters of a daughter's son's daughter, in this form :

#### THE DECEASED,

Daughter	Daughter	Daughter
Son	Daughter	Daughter
Daughter	Son	Daughter
Two Daughters	Daughter	Two Sons.

*in this case* according to ABU YUSUF (on whom be

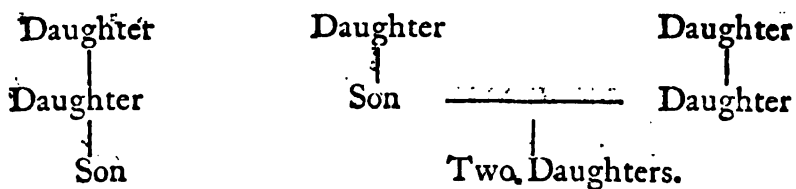
GOD's mercy!) the property is divided among the branches in seven parts, by considering their persons; but, according to MUHAMMED, (to whom GOD be merciful!) the property is distributed according to the highest difference *of sex*, I mean in the second rank, in sevenths, by the number of branches in the roots; and, according to him, four sevenths of it go to the daughters of the daughter's son's daughter; since that is the share of their grandfather, and three sevenths of it, which are the allotment of the two daughters, are divided between their two children, I mean those in the third rank, in moieties; one moiety to the daughter of the daughter's daughter's son, *which* is the share of her father, and the other moiety to the two sons of the daughter's daughter's daughter, *being* the share of their mother: the correct divisor of the property is, in this case, twenty eight. The opinion of MUHAMMED (on whom be GOD's mercy!) is the more generally received of the two traditions from ABU HANIFAH (to whom GOD be merciful!) in all decisions concerning the distant kindred; and this was the first opinion of ABU YUSUF; then he departed *from it*, and said that the roots were by no means to be considered.

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## A S E C T I O N.

OUR learned *lawyers* (on whom be the mercy of GOD!) consider the *different* sides in succession; except that ABU YUSUF (may GOD be merciful to him!) considers the sides in the persons of the branches, and MUHAMMED, (on whom be GOD's mercy!) considers the sides in the roots; as, when *a man* leaves two daughters of a daughter's daughter, who *are* also the two daughters of a daughter's son, and the son of a daughter's daughter, according to this scheme:

## T H E D E C E A S E D.



*In this case*, according to ABU YUSUF, the property is *divided* among them in thirds, and then the deceased is considered as if he had left four daughters and a son; two thirds of it, therefore, go to the two daughters, and one third to the son: but, according to MUHAMMED (to whom GOD be merciful!) the estate is *divided* among them in twenty eight parts, to the two daughters twenty two shares (sixteen in right of their father and six shares in right of their mother) and to the son six shares in right of his mother.



## ON THE SECOND CLASS.

H E among them, who is preferred in the succession, is the nearest of them to the deceased, on which side soever he stands; and, in the case of equality in the degrees of proximity, then he, who is related to the deceased through an heir, is preferred by the opinion of ABU SUHAIL, *surnamed* ALFERAIDI, of ABU FUDAIL ALKHAS-SAF, and of ALI, the son of ISAI ALBASRI; but, no preference *is given* to him according to ABU SULAIMAN ALJURJANI, and ABU ALI AL BAIHATHI ALBUSTI. If their degrees be equal, and there be none among them, who is related through an heir, or, if all of them be related through an heir, then, if the sex of those, through whom they are related, agree, and their relation be on the same side, the distribution is according to their persons, but if the sex of those, to whom they are related, be different, the property is distributed according to the first rank that differs in sex, as in the first class; and, if their relation differ, then two thirds *go* to those on the father's side, that *being* the share of the father, and one third *goes* to those on the mother's side, that *being* the share of the mother: then what has been allotted to each set is distributed among them, as if their relation were the same.

## ON THE THIRD CLASS.

THE rule concerning them is the same with that concerning the first class; I mean, *that he is preferred in the succession, who is nearest to the deceased: and, if they be equal in relation, then the child of a residuary is preferred to the child of a more distant kinsman; as, if a man leave the daughter of a brother's son, and the son of a sister's daughter, both of them by the same father and mother, or by the same father, or one of them by the same father and mother, and the other by the same father only: in this case the whole estate goes to the daughter of the brother's son, because she is the child of a residuary; and, if it be by the same mother only, distribution is made between them by the rule, "A male has the share of two females," and, by the opinion of ABU YUSUF (to whom GOD be merciful!) in thirds, according to the persons, but, by that of MUHAMMED, (may GOD be merciful to him!) in moieties according to the roots; and, if they be equal in proximity, and there be no child of a residuary among them, or if all of them be children of residuaries, or if some of them be children of residuaries, and some of them children of those entitled to shares, and their relation differ, then ABU YUSUF (to whom GOD be merciful!) considers the strongest in consanguinity; but*

MUHAMMED (may GOD be merciful to him) divides the property among the brothers and sisters in moieties, considering as well the number of the branches, as the sides in the roots; and what has been allotted to each set is distributed among their branches, as in the first class: thus, *if a man leave* the daughter of the daughter of a sister by *the same* father and mother, she is preferred to the son of the daughter of a brother by the same father *only*, according to ABU YUSUF (to whom GOD be merciful!) by reason of the strength of relation; but, according to MUHAMMED, (may GOD be merciful to him) the property is divided between them both in moieties by consideration of the roots. So, when *a man* leaves three daughters of different brothers, and three sons and three daughters of different sisters, *as* in this figure:

***T H E   D E C E A S E D .***

Sister — Sister — Sister — Brother — Brother — Brother

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by the same

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Mother — Father — Father — Mother — Father — Father

*and Mother*

*and Mother*

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Son    Son    Son    Daughter Daughter Daughter

Daughter Daughter Daughter.

**L**

*In this case*, according to ABU YUSUF, the property is divided among the branches of the whole blood, then among the branches by the same father, then among the branches by the same mother, *according to the rule* “the male has the allotment of two females,” in fourths, by considering the persons; but, according to MUHAMMED (to whom GOD be merciful!) a third of the estate is divided equally among the branches by the same mother, in thirds, by considering the equality of their roots in the division of the parents, and the remainder among the branches of the whole blood in moieties, by considering in the roots the number of the branches; one half to the daughter of the brother, the portion of the father, and the other between the children of the sister, the male having the allotment of two females, by considering the persons; and *the estate* is correctly divided by nine. If *a man* leave three daughters of different brothers’ sons, in this manner:

### THE DECEASED.

Daughter — Daughter — Daughter

of a Son of a Brother by the same

Father and Mother — Father — Mother

all the property goes to the daughter of the son of the

brother by the same father and mother, by the unanimous opinion *of the learned*, since she is the child of a residuary, and hath also the strength of consanguinity.

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#### ON THE FOURTH CLASS.

THE rule as to them *is*, that, when there is only one of them, he has a right to the whole property, since there is none to obstruct him; and, when there are several, and the sides of their relation are the same, as paternal aunts and paternal uncles by the same mother *with the father*, or maternal uncles and aunts, then the stronger of them in consanguinity is preferred, by the general assent; I mean, they, who are *related* by father and mother, are preferred to those, who are *related* by the father *only*, and they, who are *related* by the father, are preferred to those, who are *related* by the mother only, whether they be males or females; and, if there be males and females and their relation be equal, then the male has the allotment of two females; as, *if there be* a paternal uncle and aunt both by *one* mother, or a maternal uncle and aunt, both by the same father and mother, or by the same father, or by the same mother only: and if the sides of their consanguinity be different, then no regard *is shown* to the strength of relation; as, *if there be* a paternal aunt by the same father and mother, and a ma-

ternal aunt by the same mother, or a maternal aunt by the same father and mother, and a paternal aunt by the same mother only, then two thirds *go* to the kindred of the father, for they *are* the father's allotment, and one third to the kindred of the mother, for that *is* the mother's allotment; then what is allotted to each set is divided among them, as if the place of their consanguinity were the same.

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### ON THEIR CHILDREN, AND THE RULES CONCERNING THEM.

THE rule as to them *is* like the rule concerning the first class; I mean, *that* the best entitled of them to the succession is the nearest of them to the deceased on which ever side he is *related*; and, if they be equal in relation, and the place of their consanguinity be the same, then he, who has the strength of blood, is preferred, by the general assent; and, if they be equal in degree and in blood, and the place of their consanguinity be the same, then the child of a residuary *is* preferred to whoever is not *such*; as, *if a man leave* the daughter of a paternal uncle, and the son of a paternal aunt, both of them by *the same* father and mother, or by *the same* father, all the property goes to the daughter of the paternal uncle; and, if one of

them be by *the same* father and mother, and the other by the same father only, *then* all the estate goes to the claimant, who has the strength of consanguinity, according to the clearer tradition ; *and this* by analogy to the maternal aunt by the same father, for though she be the child of a distant kinsman, yet she is preferred, by the strength of consanguinity, to the maternal aunt by the *same* mother *only*, though she be the child of an heir; since the weight which prevails by itself, that is, the strength of consanguinity, is greater than the weight by another, which is the descent from an heir. Some of them (the learned) say, *that* the whole estate goes to the daughter of the paternal uncle by the same father, since she is the daughter of a residuary ; and, if they be equal in degree, yet the place of their relation differ, they have no regard *shown* to the strength of consanguinity, nor to the descent from a residuary, according to the clearer tradition ; by analogy to the paternal aunt by the same father and mother, for though she have two bloods, and be the child of an heir on both sides, and her mother be entitled to a legal share, *yet* she is not preferred to the maternal aunt by the *same* father ; but two thirds *go* to whoever is related by the father ; and *there* regard is shown to the strength of blood ; then to the descent from a residuary ; and one third *goes* to who-

ever is related by the mother, and there *too* regard is shown to strength of consanguinity: then, according to ABU YUSUF, (may GOD be merciful to him!) what belongs to each set is divided among the persons of their branches, with attention to the number of sides in the branches; and, according to MUHAMMED, (may GOD be merciful to him!) the property is distributed by the first line, *that* differs, with attention to the number of the branches and of the sides in the roots, as in the first class; then this rule is applied to the sides of the paternal uncles of his parents and their maternal uncles; then to their children; then to the side of the paternal uncles of the parents of his parents, and to their maternal uncles; then to their children, as in the *case of* residuaries.

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### ON HERMAPHRODITES.

TO the hermaphrodite, *whose sex is quite doubtful, is allotted* the smaller of two shares, I mean the worse of two conditions, according to ABU HANÍFAH, (may GOD be merciful to him!) and his friends, and this is the doctrine of the generality of the *Prophet's* companions, (may GOD be gracious to them!) and conformable to it are decisions *given*; as, when *a man* leaves a son, and a daughter, and an hermaphrodite, then the hermaphrodite has the share



of a daughter, since that is ascertained : and according to ÂÂMIR ALSHÂBI, (and this is the opinion of IBNU ÂBBÂS, may GOD be gracious to them both!) the hermaphrodite has a moiety of the two shares in the controversy; but *the two great lawyers* differ in putting in practice the doctrine of ALSHÂBI; for ABU YÛSUF says, *that* the son has one share, and the daughter half a share, and the hermaphrodite three fourths of a share, since the hermaphrodite would be entitled to a share, if he were a male, and to half a share, if he were a female, and this is settled by *his* taking half the sum of the two portions; or, we may say, he takes the moiety which is ascertained, together with half the moiety which is disputed, so that there come to him three-fourths of a share; for he (ABU YÛSUF) pays attention to the legal share and to the increase, and he verifies *the case* by nine: or, we may say, the son has two shares, and the daughter one share, and the hermaphrodite a moiety of the two allotments, and that is a share and half a share. But MUHAMMED (may GOD be merciful to him!) says, that the hermaphrodite would take two fifths of the estate, if he were a male, and a fourth of the estate, if he were a female, and that he takes a moiety of the two allotments, and that *will give him* one fifth and an eighth by attention to both sexes; and the case is rectified by forty; since that

is the product of one of the *numbers in the two cases*, which is four, multiplied into the other, which is five, and that product multiplied by two (*which is the number of the*) cases; and then he, who takes any thing by five, *has it* multiplied into four, and he, who takes any thing by four, *has it* multiplied into five; so that thirteen shares go to the hermaphrodite, and eighteen to the son, and nine to the daughter.

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#### O N P R E G N A N C Y.

THE longest time of pregnancy is two years, according to ABU HANÍFAH (may GOD be merciful to him!) and his companions; and according to LAITH, the son of SÂD ALFAHMÍ, (may GOD be merciful to him!) three years; and, according to ALSHÁFIÎ, (may GOD be merciful to him!) four years: but according to AL-ZUHRI, (may GOD be merciful to him!) seven years: and the shortest time for it is six months. There is reserved for the child in the womb, according to ABU HANÍFAH (may GOD be merciful to him!) the portion of four sons, or the portion of four daughters, whichever of the two is most; and there is given to the rest of the heirs the smallest of the portions; but, according to MUHAMMED (may GOD be merciful to him!) there

is reserved the portion of three sons or of three daughters, whichever of the two is most: LAITH, son of SÂD, (may GOD be gracious to him!) reports this *opinion* from him; but, by another report, *there is reserved* the portion of two sons; and one of the two opinions is that of ABU YÛSUF (may GOD be merciful to him!) as HISHÂM reports it from him; but ALKHAÛSÂF reports from ABU YÛSUF (may GOD be merciful to him!) that there should be reserved the share of one son or of one daughter; and, according to this, decisions *are made*; and security must be taken, according to his opinion. And, if the pregnancy was by the deceased, and *the widow* produce a child at the full *time* of the longest period *allowed* for pregnancy, or within it, and the woman hath not confessed her having broken her legal term *of abstinence*, *that child* shall inherit, and others may inherit from him; but, if she produce a child after the longest *time* of gestation, he shall not inherit, nor shall others inherit from him: and if the pregnancy was from another man than the deceased, and she, *the kinswoman*, produce a child in six months or less, he shall inherit; but, if she produce the child after the least period of gestation, he shall not inherit.

NOW the way of knowing the life of the child at the time of its birth, is, that there be found in him that, by which life is proved; as a voice, or sneezing, or weeping,

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or smiling, or moving a limb; and, if the smallest *part* of the child come out, and he then die, he shall not inherit; but if the greater *part* of him come out, and then he die, he shall inherit: and, if he come out straight (*or with his head first*) then his breast is considered; I mean, if his whole breast come out, he shall inherit; but if he come out inverted (*or with his feet first*) then his navel is considered.

THE chief rule in arranging cases on pregnancy is, that the case be arranged by two suppositions, I mean by supposing, that the child in the womb is a male, and by supposing, that it is a female: then, compare the arrangement of both cases; and, if the numbers agree, multiply the measure of one of the two into the whole of the other; and, if they disagree, then multiply the whole of one of the two into the whole of the other, and the product will be the arranger of the case: then multiply the allotment of him, who would have something from the case, which supposes a male, into that of the case, which supposes a female, or into its measure; and then that of him, who takes on the supposition of a female, into the case of the male, or into its measure, as we have directed concerning the hermaphrodite; then examine the two products of that multiplication; and whether of the two is the less, that shall be given to such an heir; and the difference between

them must be reserved from the allotment of that heir; and, when the child appears, if he be entitled to the whole of what has been reserved, it is well; but, if he be entitled to a part, let him take that part, and let the remainder be distributed among the *other* heirs, and let there be given to each of those heirs what was reserved from his allotment: as, when a man has left a daughter and both his parents, and a wife pregnant, then the case is *rectified* by twenty-four on the supposition, that the child in the womb is a male, and by twenty-seven on the supposition, that it is a female: now between the two numbers of the arrangement there is an agreement in a third; and, when the measure of one of the two is multiplied into the whole of the other, the product amounts to two hundred and sixteen, and by that *number* is the case verified; and, on the supposition of its male sex, the wife takes twenty-seven shares, and each of the two parents, thirty-six; but, on the supposition of its female sex, the wife has twenty-four, and each of the parents, thirty-two; and twenty-four are given to the wife, and three shares from her allotment are reserved; and from the allotment of each of the parents are reserved four shares; and thirteen shares are given to the daughter; since the *part* reserved in her right is the allotment of four sons, according to ABU HANÍFAH, (may GOD be merciful to him!) and when the

sons are four, then her allotment is one share and four ninths of a share out of four-and-twenty multiplied into nine, and that makes thirteen shares; and this *belongs* to her, and the residue *is* reserved, which *amounts to* an hundred and fifteen shares. If the widow bring forth one daughter or more, then all the *part* reserved *goes* to the daughters; and, if she bring forth one son or more, then must be given to the widow and both parents what was reserved from their shares; and what remains must be divided among the children: and, if she bring forth a dead child, then must be given to the widow and both parents what was reserved from their shares, and to the daughter a complete moiety, that is, ninety-five shares *more*, and the remainder, which is nine shares, to the father, since he *is* the residuary.

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### ON A LOST PERSON.

A LOST person is *considered as* living in *regard to* his estate; so that no one can inherit from him; and his estate is reserved, until his death can be ascertained; or the term for *a presumption of it* has passed over: now the traditional opinions differ concerning that term; for, by the clearer tradition, “when, not one of his equals in age remains, judgement may be given of his death;”

but HASAN, the son of ZIYAD, reports from ABU HANĪFAH, (may GOD be merciful to him!) that the term is an hundred and twenty years from the day on which he was born; and MUHAMMED says, an hundred and ten years; and ABU YUSUF says, an hundred and five years; and some of them, *the learned*, say, ninety years; and according to that *opinion* are decisions made. Some of *the learned in the law* say, that the estate of a lost person must be reserved for the final regulation of the *Imām*, and the judgement suspended as to the right of another person; so that his share from the estate of his ancestors must be kept, as in the *case* of pregnancy; and, when the term is elapsed, and judgement given of his death, then his estate goes to his heirs, *who are* to be found, according to the judgement on his decease; and, what was reserved on his account from the estate of his ancestor, is restored to the heir of his ancestor, from whose estate that share was reserved; since the lost person is dead as to the estate of another.

THE principle in arranging cases concerning a lost person is, that the case be arranged on a supposition of his life, and then arranged on a supposition of his death; and the rest of the operation is what we have mentioned in the chapter of pregnancy.



## ON AN APOSTATE.

WHEN an apostate *from the faith* has died naturally, or been killed, or passed into a hostile country, and the *Kādi* has given judgement on his passage *thither*, then what he had acquired, at the time of his being a believer, *goes* to his heirs, *who are* believers; and what he has gained since the time of the apostasy is placed in the publick treasury, according to ABU HANĪFAH, (may GOD be merciful to him!) but, according to the two *lawyers*, (ABU YÚSUF *and* MUHAMMED) both the acquisitions *go* to his believing heirs; and, according to ALSHĀFIĪ, (may God be merciful to him!) both the acquisitions are placed in the publick treasury; and what he gained after his arrival in the hostile country, that *is* confiscated by the general consent: and all the property of a female apostate *goes* to her heirs, *who are* believers, without diversity of opinion among our masters, to whom God be merciful! but an apostate shall not inherit from any one, neither from a believer nor from an apostate like himself, and so a female apostate shall not inherit from any one; except when the people of a whole district become apostates altogether, for then they inherit reciprocally.



## ON A CAPTIVE.

THE rule concerning a captive *is* like the rule of other believers in regard to inheritance, as long as he has not departed from the faith ; but, if he has departed from the faith, then the rule concerning him *is* the rule concerning an apostate ; but, if his apostasy be not known, nor his life nor his death, then the rule concerning him *is* the rule concerning a lost person.

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ON PERSONS DROWNED, OR BURNED,  
OR OVERWHELMED IN RUINS.

WHEN a company of *persons* die, and it is not known which of them died first, they are considered, as if they had died at the same moment ; and the estate of each of them *goes* to his heirs, *who are* living ; and some of the deceased shall not inherit from others : this is the approved *opinion*. But ÂLĪ, and IBNU MASŪD say, according to one of the traditions from them, *that* some of them shall inherit from others, except in what each of them has inherited from the companion of his fate.

THE END.



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A  
C O M M E N T A R Y  
O N  
THE SIRĀJIYYAH.

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IN our administration of justice to *Mohammedans* according to their own laws, it will be of no use to inquire, what their legislator meant by declaring, that *the law of inheritances constituted one half of juridical knowledge*\*: if he intended any thing more than a strong assertion of its importance, he probably had in contemplation the two general modes of acquiring property, *contracts* and *succession*, or the agreement of parties and the operation of law; and this explanation of the phrase, which had occurred to me on my first perusal of it, is also suggested by *Sayyad SHARĪF*, together with a more fanciful interpretation, which *Miulavi KĀSĪM* has adopted, that, *life* and *death* being incident to our probationary state in this world, and the law of *succession* manifest-

\* Page 1.

ly relating to the *dead*, it is properly opposed to all other laws, which prescribe the duties and ascertain the rights of the *living*; but we merely take notice of the sentence, that no part of the *Sirájíyyah* may be unexplained, and proceed to the *four* acts, which, on the decease of a *Mohammedan*, are to be successively performed by the magistrate, or under his authority.

I. A REGARD to publick decency and convenience, as well as to publick religion and health, seems in all nations to require, that the bodies of deceased persons be removed out of sight, with all due speed and solemnity, at a moderate expence to be defrayed, even before the payment of their just debts, out of the property left by them, on which no legal claim, from hypothecation or otherwise, had previously attached: but the *Muselman* lawyers, who admit, that the funeral charges must in the first place be defrayed, assign a very whimsical reason for such a priority; *because*, they say, the *winding-sheet* and other clothes of the *dead* are analogous to suitable apparel worn by the living, and consequently should not be liable to the claims of a creditor. The legal expenses of burying a *Mohammedan* are very moderate, both in the *number* and *value* of the clothes, in which the deceased is to be wrapped: as more than *three* pieces of cloth for a man, or than *five* pieces for a wo-

man, would be held a prodigal superfluity, and less than those, a niggardly deficiency; of expense, so, if the funeral clothes of AMRU or HINDA were dearer than the vesture usually worn by them, when alive, it would be a culpable excess; and if cheaper, a blameable defect; but, if in fact they had been used to wear one sort of apparel on solemn festivals, another in visiting their friends, and a third, in their own houses, the value of their visiting dress must regulate that of their burial, and either extreme would be too prodigal or too parsimonious. Should their debts, indeed, cover the whole of their property, the *legal* expense of the funeral must be reduced to the *sufficient* expense, as it is called; that is, to *two* pieces of cloth for AMRU and to *three* for HINDA: the names, dimensions, and uses of all the cloths used in funerals, both for men and for women, are enumerated in *Persian* by Māulavī KĀSIM; but it would be useless to mention them; and it seems only necessary to add on this article, that, if deceased persons leave no property whatever, or none without a special lien on it, the funeral expenses must be paid by such of their relations, as would have been compellable by law to maintain them, when living; and, if there be no such relations, by the publick treasury, in which there is always an ample fund arising from forfeitures and escheats.

II. AFTER the burial, all the just debts of the deceased must be paid out of his remaining assets, as far as they extend; and, if there be many creditors, they must be satisfied in equal proportion, except that a *debt of health*, to use the *Arabian* phrase, must be discharged before a *debt of sickness*; that is, a debt *contracted* or *acknowledged*, while the party was of sound understanding and body, is preferred, when legally proved, to one *acknowledged* in sickness, but of which no other evidence is produced. A religious vow, or promise of a charitable donation, as an atonement for sin, constitutes a debt *in conscience* only; and the sum thus promised must be paid out of a third part of the assets, after the legal creditors have been satisfied, provided that it was bequeathed by will; but, if no will was made, the temporal estate shall not be charged with a mere debt of religion.

III. THE legacies of a *Muselman*, to the prejudice of his heirs, must not exceed a *third part* of the property left by him, and remaining after the discharge of his debts: over a third of such residue he has absolute power; and his legatee shall receive it immediately, whether a specifick thing or certain sum of money, or only a fractional part of his estate, was bequeathed. This is the opinion of SHARIF; though a distinction, which

the text by no means implies, has been taken between a *determinate* and an *indeterminate* legacy.

IV. WE come now to the *distribution* of his estate, remaining after the payment of debts and legacies, among his *heirs* (for so we may call them, although *real* and *personal* property are undistinguished in the laws of the *Arabs*) according to certain rules derived from three sources, the *Korán*, the genuine system of oral traditions from the legislator, and those opinions in which the learned and orthodox have generally concurred\*: the order, and proportions, in which the property of AM-RU or HINDA must be distributed, constitute the principal subject of the work, which we have undertaken to explain.

1. THE first class of *heirs* are they, who may be called *sharers*, because a certain *share* of the estate is expressly allotted to each of them in the *Korán*, and particularly in the *fourth* chapter of it.

2. NEXT come they, who may be distinguished by the name of *residuaries*, because they take the *residue* after the *shares* have been duly distributed; and they are of two sorts, residuaries by *consanguinity* and residuaries

\* Page 2.

for *special cause*, the former of whom are preferred in the order of succession; the latter are the masters, or mistresses of enfranchised slaves, or their *male* residuary heirs. If no *sharers* be living, the *residuaries* take the whole; but, if there be *sharers by consanguinity* and no residuaries, a farther portion of the inheritance *reverts* to them, though never to the widower or to the widow, while any heirs by blood are alive.

3. ON failure of the two preceding classes, the distribution is made among those *next of kin*, who are neither *sharers* nor *residuaries*: they may be called the *distant kindred*.

4. SHOULD none of the distant kindred be living and capable of inheriting, the estate goes (unless there be a widow or a widower, who is first entitled to a *share*) to him, who may be called the *successor by contract*; and of that succession it is necessary to give an example: if AMRU, a man of an unknown descent, say to ZAID, “Thou art my kinsman, and shalt be my successor after my death, *paying for me*, any fine and ransom to which I may become liable,” and ZAID accept the condition, it is a valid contract by the *Arabian* law; and, if ZAID also be a man whose descent is unknown,



and make the same proposal to AMRU, who likewise accepts it, the contract is mutual and similar, and they are *successors by contract* reciprocally.

5. IF no such agreement had been made, but if AMRU in his life time had acknowledged ZAID, a man of an unknown pedigree, to be his *brother* or his *uncle*, that is, to be related to him by his *father* or by his *grandfather*, though in truth he had no such relation, and the bare acknowledgement of AMRU cannot be admitted as a proof of it, yet, if AMRU die without retracting his declaration, ZAID is called *the acknowledged kinsman by a common ancestor*, and stands in the *fifth* class of successors, but takes the estate before the general devisee.

6. LAST of all comes the person, to whom the deceased had left the whole of his property by a will duly made and proved; for, though the law secures to his heirs of the five preceding classes *two thirds* of his estate, yet it so far respects his *dominion*, while he lived, over his own property, and his *will* as to the disposal of it after his decease, that it will rather give effect to an intention not strictly conformable to law, (for the *Korān* seems to allow *pious bequests* only) than suffer his estate to escheat; which must be the consequence of his

dying without a representative. All such escheats to the sovereign go towards a fund for charitable uses; and according to the system of ZAID, the son of THĀBIT, which has been shortly explained in a former publication, that fund, if it be *regularly established*, is entitled to the whole estate on failure of residuary heirs, without any *return* to the sharers, and to the entire exclusion of the *four* last classes; but this doctrine seems quite exploded.

BEFORE we proceed to the law of *shares*, it is proper to take notice of the four impediments to succession; which are slavery, homicide, difference of religion, and difference of country, or of allegiance, *the last three are not considered as such in the law of Zaid.*

1. SLAVERY, by the *Mohammedan* law, is either *perfect* and *absolute*, as when the slave and all, that he can possess, are wholly at the disposal of his master, or *imperfect* and *privileged*, as when the master has promised the slave his freedom on his paying a certain sum of money by easy instalments, or, without any payment, after the death of the master: a female slave, who has borne a child to her master, is also *privileged*; but in both sorts of slavery, as long as it continues, the slave can acquire no property, and consequently cannot inherit. The *Arabian* custom of allowing a slave to cultivate a piece of land, or set up a trade, on his own account, so that

he may work out his manumission by prudence and industry, and by degrees pay the price of his freedom, may suggest an excellent mode of enfranchising the black slaves in our plantations, with great advantage to our country and without loss to their proprietors.

2. HOMICIDE is either *with malice prepense* and punishable with *death*, or *without proof of malice*, and *expiable* by redeeming a *Muselman* slave, or by fasting two entire months, and by paying the price of blood; or, thirdly, it is *accidental*, for which an expiation is necessary. *Malicious homicide*, or *murder* (for, by the best opinions, the *Arabian* law on this head nearly resembles our own) is committed, when a human creature is unjustly killed with a weapon, or any dangerous instrument likely to occasion death, as with a sharp stick or a large stone, or with fire, which has *the effect*, says KĀSĪM, *of the most dangerous instrument*, and, by parity of reason, with *poison* or by *drowning*; but those two modes of killing are not specified by him; and there is a strange diversity of opinion concerning them: killing *without proof of malice* is, when death ensues from a beating or blow with a flight wand, a thin whip, or a small pebble, or with any thing not ordinarily dangerous: *accidental death* is, when it was neither designed nor could have been prevented by ordinary care, as if AMRU were to shoot an

arrow at a wild beast, and the arrow by accident were to kill ZAID, or if MÁZIN were to fall from his terrace upon ZUHAIK and kill him by his fall; in which cases the slayers would not be permitted to inherit *from the slain*. If, however, a man were to dig a pit, or fix a large stone, on the field of another, and the owner of the field were to be killed by falling at night into the pit, or running against the stone, the doer of the illegal act, which was the primary *occasion* (but not the *cause*) of the death, must pay the price of blood, but would not, it seems, be generally disabled from inheriting: he ought, one would think, to be incapable of succeeding to the property of the deceased, whom he destroyed, and whom he might have meant to destroy, by such a machination.

3. AN unbeliever shall never be heir to a believer, nor conversely; but infidel subjects may inherit from infidels.

4. THE difference between two states or countries consists in the difference of sovereigns, by whom protection is given to their respective subjects, and to whom allegiance is respectively due from them: this difference is particularly marked between a country governed by a *Mohammedan* power and a country ruled by a prince of *any other religion*; for they are always, virtually at least,

in a state of warfare, the first being called by lawyers *the seat of peace*, and the second, *the seat of hostility*. A difference of country, therefore, which excludes from the right of inheriting, is either *actual* and *unqualified*, as when an *alien enemy* resides in the *seat of hostility*, or when an alien has chosen his domicil in the *seat of peace*, and pays the tribute exacted from infidels, in which case the *tributary* shall not be heir to the *alien enemy* dying abroad, nor conversely, because each of them owed a separate allegiance; or the difference is *qualified*\*, as when a *fugitive enemy* seeks quarter, and obtains a temporary residence in the *seat of peace*, or when two alien enemies are fugitives from two different hostile countries: now, although the *tributary* and the *fugitive* actually live in the same kingdom, yet, since the fugitive continues a subject of the hostile power, he remains, *as it were*, under a different government, and there is no mutual right of succession between him and the tributary; nor, by similarity of reason, between *two fugitives*, who leave two distinct hostile governments, and obtain quarter for a time in the land of believers, but without any intention of making it their constant abode.

IF none of these four incapacities preclude the heirs of AMRU from the legal succession to his estate, which we will suppose already sold and reduced to money of

\* Page 3.

one denomination, the magistrate, or his officer, must proceed to the distribution of the *shares*; and, as they are a *moiety*, a *fourth*, an *eighth*, two *thirds*, one *third*, and a *sixth*, of the aggregate sum, it will be convenient at first to consider that sum as consisting of *twenty-four* equal parts, so that the shares will be, in whole numbers, *twelve*, *six*, *three*, *sixteen*, *eight*, and *four*.

THE *sharers* are *twelve* persons, *four* males and *eight* females; but, before we specify their respective allotments, it is necessary to premise, that a *grandfather* and a *grandmother*, according to the *Arabian* idiom, signify a *male*, and a *female*, ancestor in any degree; that a *true* grandfather is he, between whom and the deceased no female ancestor intervened; that a *false* grandfather is, where the paternal line of ascent was broken by the intervention of a female; and that a grandmother also is called *true*, when no *false grandfather* intervened between her and the deceased: in short, the only *true line of ancestry*, according to the *Arabs*, is an uninterrupted succession of *paternal* forefathers. The *male* sharers then are the *father*, the *true grandfather*, the *brother by the same mother* only, and the *widower*: the females are the *widow*, the *daughter*, the *female issue of the son*, the *sister of the whole blood*, the *sister by the same father* only, the *sister by the same mother* only, the *mother* herself, and the *true grandmother*.

WE begin with the *males* in the order of the shares before enumerated; and, 1. The father of AMRU or HINDA takes \* a *sixth* absolutely, though a *son* of the deceased be living, or any male descendant, who claims wholly through males; but, if there be no such male descendant, he becomes a *residuary heir*; and, if there be only a *daughter* of the deceased, or a *female* descendant from the son, he first has his legal share, or a *sixth*, and, when her share also has been allotted, he claims the residue. 2. The true grandfather is excluded from any share by the living father, *through whom* alone the grandfather bore a relation to the deceased; and, although a similar reason might afterwards be applied to the mother, and operate to the exclusion of her children, yet the father has the additional strength of a double title, both as a *sharer* and as a *residuary*: but, if the father also be dead, *his* father, or true paternal ancestor, has exactly the same interest, except in four cases, which will be presently mentioned. 3. A single half brother, by the same mother only, takes a *sixth*, and two or more such half-brothers, a *third*; provided that the deceased left neither children, nor male issue of a son, nor a father, nor a true grandfather; by any of whom the brothers by the same mother are excluded; and this article brings us necessarily to one class of *female sharers*; for, *in this instance*,

there is no distinction of sex; both brothers *and sisters* by the same mother only having an equal right and an equal share in the distribution. 4. A *moiety* of HINDA's estate, if she die without children, or the issue of a deceased son, goes to her widower AMRU, who, if she leave such issue, has no more than a *fourth*.

As examples of the father's rights, let us suppose AMRU to have died worth two thousand four hundred pieces of gold, leaving his father ZAID, and either a son or a son's son, OMAR : in this case the *four hundred* pieces are the share of ZAID, and OMAR takes the remaining two thousand ; but, if AMRU leave only his father ZAID and either a daughter, or son's daughter, LAILA, the father is first entitled to the *four hundred* pieces, or *sixth* part ; and, after LAILA has received *twelve* hundred, or a moiety of the estate, (which, as we shall see, is her *share* in this case) he takes, as *residuary*, the *eight* hundred pieces, which remain ; so that the property of AMRU is equally divided between them. Should no relation be left but ZAID the father, and LEBID the brother, of the deceased, LEBID is excluded ; and the whole estate goes to ZAID. If, in the three preceding cases, the paternal grandfather SĀLIM had been left instead of ZAID, his rights would have been precisely the same ; and the only difference between



ZAID and SALIM will appear from the four following examples. 1. The paternal grandmother would be excluded by ZAID her son, but not by his father, her husband, SALIM. 2. If AMRU or HINDA leave a father ZAID, a mother SOLMA, and a widow ZAINEB, or widower HARETH, the mother takes a *third* part of what remains after ZAINEB or HARETH has received the legal share; but, if SALIM be substituted for ZAID, she would have a right to a third of the *whole assets*, according to the prevailing opinion, although ABU YUSUF thought her entitled, even in that case, to no more than a third of the *remainder*. 3. The brothers of the whole blood, and those by the same father only, are excluded from the inheritance by ZAID the father, but not by the grandfather SALIM, as the best lawyers agree, dissenting on this point from their master ABU HANIFAH. 4. If AMRU had manumitted his slave YASMIN, and died, leaving his father ZAID and a son OMAR, a *sixth* part of the right of succession to YASMIN would have vested, according to ABU YUSUF, in ZAID, but, if the paternal grandfather SALIM had been left instead of the father, the whole interest would have vested in the son: in this case that illustrious lawyer ultimately dissented from his master and from his fellow-student MUHAMMED, who were both very justly of opinion, that, whether ZAID or SALIM were alive on the death of the manumittor, the

whole right of succession to the manumittee vested in OMAR.

LET us proceed to the shares of the *females*; and 1. If AMRU die without children, and without any issue of a deceased son, his widow HINDA must receive a *fourth* of his assets; but her share is an *eighth* only\*, if any such issue be living: should he leave more widows than one, they take equal parts of such *fourth* or *eighth*; so that the legal share of the widower is always in a double ratio to that of the widow or widows: as, if HINDA die worth *twenty four* thousand zecchins, her surviving husband AMRU must be entitled either to *twelve*. or to *six* thousand; and if AMRU die with the same estate, his widow HINDA must have either *six* or *three* thousand for her sole share; or, if ZAINEB and ABLA had also been legally married to AMAU, the three widows must receive either *two* or *one* thousand zecchins each, as the case may happen. 2. *One daughter* takes a moiety, and *two or more* daughters have *two thirds*, of their father's estate; but, if the deceased left a son, the rule, expressed in the *Koràn*, is this: "to one male give the "portion of two females"; and the daughters in that case are not properly *sharers*, but *residuary heirs* with the son, their part of the inheritance being always in a subduple ratio to his part. Thus, if AMRU die worth

\* Page 5.

*twenty-four* thousand pieces of gold, his only child FÁTIMA takes twelve thousand as her *share*; but, if she have three sisters, AZZA, LATÍFA, and ZUBAIDA, two thirds of the assets, or *sixteen* thousand pieces, are equally divided between the four girls; and, if there be a son OMAR, he must receive, in the first case, *sixteen* thousand, while FÁTIMA has *eight*; and, in the second, *eight* thousand, while she and her sisters take each *four* thousand, pieces. 3. If OMAR had died before his father, leaving female issue, and his father had then died without any daughter of his own, the daughters of OMAR would have had precisely the same shares, to which those of AMRU himself would have been entitled; but, had FÁTIMA been living, she would have taken *half* the estate, or *twelve* thousand pieces of gold, and a *sixth* only, or *four* thousand; the complement of *two thirds* or *sixteen* thousand, would have been equally distributed among her nieces. Had FÁTIMA and AZZA been at that time alive, they would have taken their legal share, to the exclusion of their brother's *female* issue, unless the right of that issue had been sustained by a *male* in an *equal*, or a *lower* degree, who would have made them *residuaries*, “the *male* taking, by “the rule, the portion of two females”; but a male in a *higher* degree would not have given them that advan-

T

tage; and, if OMAR himself had survived, his daughters would have been wholly excluded. The *six* cases, therefore, or different situations, of the female issue of OMAR may be thus recapitulated: 1. A single female takes a *moiety*. 2. Two or more have *two thirds*. 3. A *male* in the same, or a lower, degree than themselves, gives them a *residuary* right in a subduple ratio to his own. 4. With a daughter of AMRU, who is entitled to *half*, they would have only a *sixth*, to make up the regular share of the female issue. 5. They are excluded, if AMRU left more daughters than one, but no male issue in any equal, or a *lower*, degree. 6. A son also of AMRU wholly excludes them. In the three first cases, their legal claims correspond with those of daughters: but in the three last their rights are weaker, because they are in a remoter degree from the deceased.

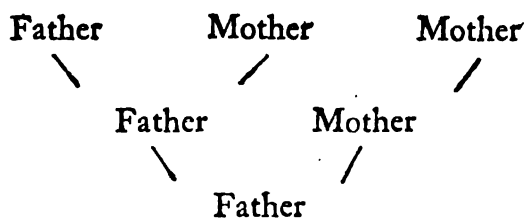
THE pedigree exhibited in the text \* is called by the *Arabs* the *tashbib*, because, in their opinion, it sharpens the understanding, and captivates the fancy as much as the *composition of an elegant love-poem*, which the word literally signifies; but, without adopting so wild a metaphor, we may truly say, that it is very perspicuous, and that no comment, after what has been premised, could render it clearer. An example, however, will

show more distinctly than an abstract rule, in what manner an estate is divisible, when a *male* descendant gives a *residuary* title to a *female* in the same, or in a *higher*, degree. Call the only surviving male descendant OMAR, and suppose him to be the brother of AMINA, who stands lowest in the first set of females: here the highest female in that set must receive a *moiety* of the assets; the next below her takes a *sixth* together with the highest of the second set, as the complement of *two thirds*; and the *residue* must be divided into *five* portions, of which OMAR claims *two* and each of the females in the same degree, one; but the three females below them are excluded. If OMAR be the brother of ZARIFA, whom we suppose the lowest of the middle set, the remaining *third* of the estate must be distributed in *sevenths*, because there are *five* females, *three* in a higher, and *two* in an equal, degree with OMAR, who must always have a double portion; and, if he be the brother of UNAIZA, the lowest female of the *third* set, (who, on the former supposition, would have been excluded) there will be *six* female *residuaries* entitled to portions with OMAR, but in a subduple ratio; so that, if AMRU died worth *twenty-four* thousand ducats, the daughter of his son takes *twelve* thousand of them; the two daughters of his sons' sons receive each *two* thousand;

and, the residue being *eight*, OMAR is entitled also to *two* thousand ducats, while UNAIZA and the *five* women, who remain, have each *one* thousand, which they owe to the fortunate existence of OMAR. 4\*. The rights of sisters by the same father and mother; and (5.) those of sisters by the same father only, are explained in the text with sufficient clearness, but it is proper to observe, that the *fifth* case of the first class is comprised in the *seventh* case of the second; and that (6.) the sisters by the same mother have been mentioned in a former section. There will be no use in repeating the ingenious arguments of IBNU ABBAS in support of his dissent on many points from other old lawyers, nor the solid answers, which have been given to his objections; but a story, told by SHARIF, may here be repeated, because it conveys an idea of the traditionary *Arabian* law, and shows from what sources our excellent author derived his doctrine:

\* HUDHAIL used to relate, that ABU MUSA, being consulted on the distribution of an heritage among a daughter, a son's daughter, and a sister, answered, *the first must have a moiety; the second, a sixth; and the third, what remains*; but "Consult IBNU MASUD, added he, and apprise me of his answer:" when IBNU MASUD was consulted, he said, that he was present, when MUHAMMED himself gave the same deci-

tion; and, when that answer was reported to ABU MU-  
 SA, he said, " you must put no questions to me, as long  
 " as that illustrious lawyer remains with you." 7. \* Al-  
 though the different rights of the mother in different cases  
 be very clearly explained, yet her title to *a third of the*  
*residue* may be illustrated by two examples: first, if  
 ADHRA leave only her husband WĀMIK, her mother  
 SĀDA, and her father MĀZIN, half of her estate goes  
 to WĀMIK, a third of the other half, or a sixth of the  
 whole, to SĀDA, and the remainder to MĀZIN; but,  
 secondly, if WĀMIK leave only his wife ADHRA, his  
 mother ZAINEB and his father LEBID, the widow takes  
 a quarter of his property, while ZAINEB has a third, and  
 LEBID two thirds, of the remaining three quarters. 8.  
 In giving an example of the division between two great  
 grandmothers, † we may anticipate in some degree the  
 arithmetical part of the work, which will be found ex-  
 tremely clear and ingenious. The pedigree exhibited by  
 SHARIF is in this form :



Now the paternal grandmother's mother, and the mother  
 of the paternal grandfather, are together entitled to a  
 sixth, and the paternal grandfather's father to the residue,

\* Page 8.

† Page 9.

of the estate, which ought by the general rule, to be divided into *six* parts, because *six* is the denominator of the share; but, to avoid a fraction, we must observe the proportion of *one*, or the sixth part, to *two*, or the number of persons entitled to it; and, since *one* and *two* are *prime* to each other, we must multiply *two* into *six*, and the product is the number of parts into which the property must be divided; so that of *twelve* cows or horses the great grandfather will have *ten*, and each of the great grandmothers, *one*.

THE great grandfathers are called ancestors in the *second*, and their fathers, ancestors in the *third*, degree, and so forth; and it must be remarked that in these tables the number of *female* ancestors, who inherit with the *males*, is equal to the number of such degrees: thus in the following,

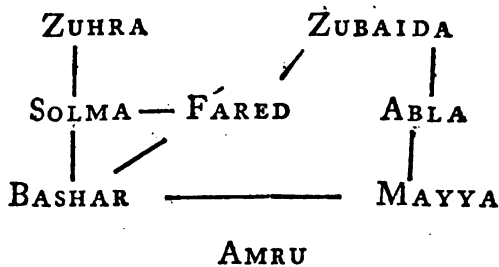
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there are *three* great great grandmothers, and the estate must be divided into *eighteen* parts, because one and three are prime to each other. We suppose in both pedigrees, that the highest line only are left by the deceased AMRU; for, by the text, *the nearest female ancestor excludes the more distant*; and, if he leave his father ZUHAIR, and his paternal grandmother AZZA, with LAILA his maternal

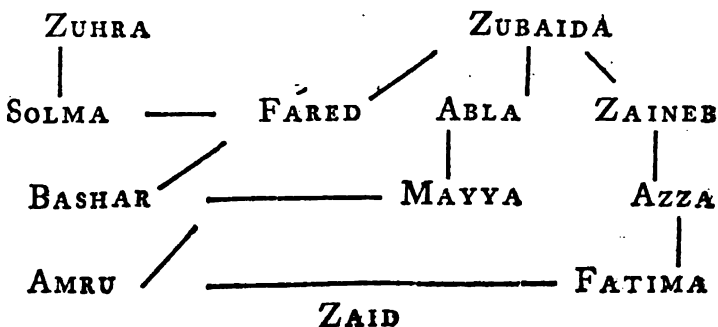


grandmother's mother, ZUHAIR takes the whole inheritance; for he excludes AZZA, and she, being nearer in degree, excludes LAILA.

LET us conclude the subject with a case put by SHARĪF in illustration of the pedigree in the text: ZUBAIDA gave her daughter's daughter MAYYA in marriage to her son's son BASHAR, and the young pair had a son AMRU, who acquired an estate, and died: now ZUBAIDA was both paternal and maternal great grandmother of AMRU, and had, therefore, a *double* relation to him; but another woman, named ZUHRA, had married her daughter SOLMA to FĀRED, who was the son of ZUBAIDA, brother of ABLA, and father of BASHAR; so that ZUHRA was AMRU's paternal grandmother's mother, and had only a single relation; as it will appear by the following arrangement of the family:



The case of a *triple* relation will be no less evident from the following pedigree:



For, if AMRU, whom in the former case we supposed to be dead without issue, had lived and married his cousin FÁTIMA, by whom he had a son ZAID, who died leaving property, ZUBAIDA would have a *triple* relation to the deceased; first, as his maternal great grandmother's mother; secondly, as his paternal grandmother's grandmother; and thirdly, as the mother of his paternal great grandfather; but ZUHRA has only a *single* relation to ZAID, as grandmother of his paternal grandfather BASHAR.

IN both these cases a *sixth* of the assets is divided *equally* between the *two* female ancestors, by the opinion of ABU YUSUF, and, according to one authority, by that of his great master also; but his fellow-student MUHAMMED (whose arguments, and the answers to them, it is needless to add) contended, that ZUBAIDA would be entitled in the first case to *two thirds*, and, in the second, to *three fourths*, of that *sixth* part, according to the number of modes, in which she was related to AMRU or ZAID.

No comment could add perspicuity to the chapter on *residuary heirs*, \* until we come to the cases of inheritance from enfranchised slaves, † where a short elucidation of the text appears necessary. If AMRU enfranchise NERGIS, and die, leaving a son BECR, and a daughter LAILA; then, on the death of NERGIS without *residuary* heirs by blood, his property goes wholly to BECR,

\* Page 10, 11.

† Page 12.

and LAILA, by the traditionary rule, takes nothing; but, suppose LAILA herself to manumit her black slave SUSEN, who then purchases a slave MISC, and gives him freedom; and suppose SUSEN first, and MISC afterwards, to die without residuary heirs, in this case the estate of MISC goes to LAILA; nor would there be any difference, if the two manumissions had been conditioned to pay a certain sum of money at a certain time. The case of a manumission promised on the death of the mistress, has rather more difficulty; but an example will make it clear: LAILA promises NERGIS, that, on her death, he shall be free; but, by the persuasion of a *Christian* friend, she renounces her faith, and seeks refuge in a hostile country: now *a believer cannot be the slave of an infidel*; and the *Mohammedan* judge pronounces accordingly, that NERGIS has gained his freedom; but LAILA, repenting of her apostasy, returns to her native country and her former belief; after which NERGIS dies without heirs: LAILA succeeds as residuary to her promisee, as she would have succeeded to a slave of NERGIS purchased after the decision of the judge, if a similar promise of manumission at his death had been made by the master; and if that second promisee had died without heirs after her repentance and return. Should CAFÚR, a slave of LAILA, marry, with her consent, MERJĀNA, the freedwoman of AMRU, the son of that couple would be born free,

because, in respect of freedom or slavery, *a child has the condition of its mother*, and he bears a relation to AMRU her manumittor; but, should LAILA give CĀFŪR his freedom, he would *draw* that relation from AMRU, through himself, to LAILA, so that she would succeed to the son of CĀFŪR and MERJĀNA, if he died after his parents and without other heirs of the first or second class: the case would be similar, if CĀFŪR being enfranchised, had bought a slave MISC, and given him in marriage to the freedwoman of ZAID; for, if the issue of that marriage had been a son, born free, but with a relation to ZAID, and if CĀFŪR had then given MISC his liberty, he would have *drawn* from ZAID the relation of his freedman's child, and transferred it, through himself, to LAILA his former mistress. This doctrine of a *relation* (as the *Arabs* call it) first *vested* through the mother and then *devested* through the father, is founded on a decision of OTHMĀN in the case of ZUBAIR and RAFĪ.

WE had occasion before, to mention the difference (according to ABU YUSUF) between the *father*, and the *grandfather*, of the manumittor in regard to their succession, with his *son*, to the property of a freedman; nor can any thing of moment be added here; but it will be proper to explain at large the concluding case in the chapter of *residuarys*, which proves, that the relation of enfranchisement may arise by the *act of law* as well as by

the *act of the party*. Let it be premised, that marriage is prohibited between kindred of two classes; first, between all those in ascending or descending lines of consanguinity, who are called *near*; secondly, between brothers and sisters, and their issue, or between nephews or nieces and aunts or uncles, paternal or maternal, who are called *intermediate*; but, between those of the third, or *distant*, class, as the first or other cousins, there is no prohibition: now, if AMRU or HINDA purchase a kinswoman or kinsman within either of the *prohibited* degrees, the slave becomes instantly free, and a right of succession vests in the purchaser, though the mastership began and ended in one moment. Call the three daughters of HÁRETH a slave, ZUBAIDA, SÁFIYA, AMINA, who derived freedom from their mother, and two of whom, the first and third, purchase HÁRETH for fifty pieces of gold: he becomes in that instant free; and, if he die leaving property, two thirds of it go to his three daughters as their legal shares, and the residue belongs to the two, who procured him liberty; three fifths of it to ZUBAIDA, who contributed her *thirty*, and two fifths to AMINA, who added her *twenty*, pieces. To arrange the distribution without fractions, begin with *three*, the denominator of the legal share: now *two*, its numerator, is *prime* to the number of sharers; and *one* is prime also to *five*, the number of residuary portions; but *thirty* and *twenty* are *composed* to one another, since *ten*

measures thirty by *three* and twenty by *two*; and *five*, the sum of those tenths, may be considered as standing in the place of the number of residuaries: again, *five* and *three* are prime to each other, and their product is *fifteen*, which, being multiplied into *three*, the first-mentioned denominator, produces *forty five*, the number of equal parcels, into which HÁRETH's estate must be divided; so that *thirty*, or *two thirds*, may be distributed in *tens* to the three daughters, and *fifteen* or the residue, in *threes* to the *two*, who redeemed their father; ZUBAIDA taking in all *nineteen*, AMINA *sixteen*, and SÁFIYA, only *ten*, portions of the inheritance. This is the calculation of SHARÍF, and the grounds of it will presently appear; but the operation might have been shortened thus: multiply the denominator of the *legal share* into the number of sharers, and then multiply the product into the denominator of the *residuary portions*.

THE chapter of *exclusion*\* is very perspicuous; but the case of an *unbelieving* heir having really occurred in the time of ALI, we may insert it as a monument of early *Arabian* jurisprudence. SOLMA had embraced the new faith, and died, leaving her husband, and brothers by the same mother, who were all three believers, with a *son*, who continued an infidel: on a dispute concerning the inheritance, ALI and ZAID gave a moiety to the widower, considering the son as actually *dead*, a third to the half brothers,

and the rest to such of the residuaries as believed in the *Kardn*; while IBNU'L MASÚD insisted, that the son was *dead* as to the right of inheriting, but alive as to the power of excluding, and thought that he drove the widow from *a moiety* to a *fourth part* only of SOLMA's estate; but the former opinion has prevailed, and in a curious book (for which there must have been abundant materials) entitled *The Diffensions of the Learned*, it is admitted, that, by universal assent, if AMRU leave a father, who is either a slave or an infidel, and a paternal grandfather, who is both free and a believer, the father is considered as *dead in law* to all purposes, and the grandfather is heir to AMRU.

WE come now to the *Arabian* method of ascertaining the smallest number of *parcels*, into which an estate can be divided, so as to avoid fractions in the legal distribution of it: that *number* we call the *denominator*, or divisor, of the *estate*, though the *Arabick* word mean literally *the place of coming out*; and the problem is easily solved by the following rules: if the two numbers in question be prime, multiply one of them into the other; if they be *composit* to each other, multiply the *measure* of one into the second, and the product will be the number sought. The whole section \* is as clear as it could be made in a verbal translation; and it would be

\* Page 14.

superfluous to add examples of all the cases, which must occur to every one, who has attentively perused the preceding parts of the work.

A CASE, which arose in the reign of OMAR, has given occasion to some debate\*: LAILA died, leaving only AMRU her husband, HINDA her mother, and ABLA her sister of the whole blood. Now the husband and sister were each entitled to a moiety, and the mother, to a third, of LAILA's property, which, by the rule then established, could be divided into *six* parts only; but ABBAS, a companion of MUHAMMED, being consulted by the Caliph, proposed, that the regular divisor should be so *increased*, that of *eight* parts AMRU and ABLA might each take *three*, and HINDA *two*. The son of ABBAS, whose opinions were always rather ingenious than solid, was present at the decision; but, fearing the bad temper of the Caliph, suppressed at that time his own sentiments: he thought, that the *sister*, having (as we have seen) a weaker right, should bear the loss, because, *where different rights concur, the weakest invariably yields*; and he said, that, if an arithmetician could number the sands, yet he could never make *two halves* and a *third* equal to a whole; but this opinion has never been adopted, because, although the *sister* may in some cases be removed into a distinct class of heirs, yet, with a husband and a mother of the deceased, her share is

\* Page 15.



fixed by positive law, and she cannot by any means be deprived of it; so that the shares of all the claimants must be diminished in *exact proportion*; for instance, if the property had been *twenty four* pieces of gold, the mother would claim *eight*, and each of the other heirs, *twelve*; now those claims cannot all be satisfied, but eight is to twelve, as *six* to *nine*, which will be the respective shares, according to the decision of ABBAS.

EXAMPLES of the divisor *six* increased to *seven* and to *nine*, or of *twelve* to *thirteen*, *fifteen*, and *seventeen*, would appear equally ingenious, but would swell this commentary to an immoderate size: there are two decisions, however, deserving particular notice, because they were made in real causes, and have been universally approved. ZUBAIDA left her husband ADNAN, with *two sisters of the whole blood*, *two sisters by the same mother only*, and the *mother* herself; whose legal shares, in order as they are mentioned, were *a moiety*, *two thirds*, *a third*, and *a sixth*: it was impossible, therefore, to distribute them out of *thirty* pieces, for instance, divided into *six* equal parcels; but the judge, named SHURATH, divided the whole estate into *ten* parcels, each consisting of *three* pieces, and allotted them to the claimants in the proportion of their shares; that is to the husband, *three* parcels, to the sisters of the whole blood, *four*; to the half-sisters, *two*; and to the mother, *one*; assuring ADNAN, who at

first complained of the judgement, that OMAR had made a similar decision; and this case acquired celebrity among the *Arabs* by the name of SHURAIHIYYA. The next case, which was answered at once by ALI, while he was haranguing the people in the *minbar*, or pulpit, at CÚFA, is fully stated in the text: the share of the widow was, regularly, an *eighth*; that of the daughters, *two thirds*; and that of each parent, *a sixth*, all which cannot be distributed out of *twenty four* parcels; but ALI pronounced, that the property of the deceased should be divided into *twenty seven* equal parts, of which the widow should have *three*; the daughters, *sixteen*; and the two parents, *eight*. It is recorded, that, when the person, who consulted ALI, was much dissatisfied with his answer, and asked *whether the widow was not legally entitled to an eighth*, the *Caliph* said rapidly, “it is become a *ninth*,” and proceeded in his harangue with his usual eloquence.

THE arithmetical part of the *Sirâjiyya* \* is very simple, and may be found in the first pages of all our elementary books; but the difference of the *Arabian* idiom occasions a little obscurity. The chapter on primes and measures is founded on a simple analysis: when two numbers are compared, they are either equal or unequal; if unequal, either the smaller is an aliquot part of the greater, or they have a common measure, which must either be

\* Page 16.

*unit* alone, or some *number*, which the *Arabs* define a *multitude composed of units*. When the greatest common measure is found by the rule, they consider the two numbers as *agreeing* in a fraction, which has that common measure for its denominator and unit for its numerator; but the nature of the *Arabick* language makes it impossible to express in a single word the fractions less than a *tenth*: thus *twenty seven* and *twenty four* agree, as they express it, in a third; and a *third* of each number is called its *wask*, or measure, as *nine* of twenty-seven, and *eight* of twenty-four. After this explanation of the word; which is translated *the measure*, there will be no difficulty in the following cases.

I. \* AMRU leaves only his father and mother and ten daughters: now, by the rule, his estate should be divided into *six* parts, because the share of each parent is a *sixth*; and that of all the daughters *two thirds*; but *four* parts cannot be distributed, without a fraction, among *ten* persons; for which reason we must multiply *five*, which is the measure of *ten*, into *six*, which is the first number of parcels, and the product *thirty* is the number of lots, into which the property of AMRU must in fact be divided; each of his parents taking *five* lots, and each of his daughters *two*.

II. HINDA leaves her husband, both her parents, and six daughters; whose legal shares are a *fourth*, *two sixths*, and *two thirds*, of the inheritance: now the regular denominator of the lots would be *twelve*, but it is raised to *fifteen*; and since *eight* parcels cannot be distributed equally among *six* daughters, the *measure* of six, or *three*, is multiplied by fifteen; so that of *forty-five* lots *nine* may go to the husband, *twelve* to the parents, and *twenty-four* to the daughters, in exact proportion to their first distributive shares.

It will be very easy to apply the remaining rules to all the other examples given by SIRAJ'UDDIN\*; but since, in the two last cases, which are not likely to occur, the inheritance must be divided into 4320 and 5040 parcels, the calculation, after the *Arabian* mode, in words at length, would be insufferably tedious, and the reader may make it in figures with little or no trouble. The latter of those two cases† is, however, subjoined; because it will fully explain the section, in which no examples are given. SAAD<sup>A</sup> leaves *two* wives, *six* female ancestors, capable of inheriting together, *ten* daughters, and *seven* paternal uncles, whose shares of *twenty-four* (the *root*, as they call it, of this case) are *three*, *four*, *sixteen*, and *one*; for the uncles can only take what the others leave. Now by observing the primes and mea-

\* Page 18.

† Page 19.

tures, and working according to the rule, we come to 210, which must be multiplied by *twenty four*, and the product gives the smallest number of parcels, into which SAAD's estate can be duly divided: the products of that multiplicand (210) by 3, 4, 16, give 630, 840, 3360; which are the allotments of the *wives, female ancestors, and daughters*; and the allotment of each share appears at once from the following proportions:

Persons.	Firß Shares.		MULTIPLICAND,		SHARES OF EACH.	
2	:	3	::	210	:	315.
6	:	4	::	210	:	140.
10	:	16	::	210	:	336.

THE last act of the *Mufelman* judge is to make an actual division of the estate\*; and we will suppose that LAILA, in the case answered by ABBAS, had left ZAINEB and ABLA, two sisters of the whole blood, with AMRU, her husband, and HINDA, her mother; and that her property amounted only to *twenty five* gold *mohrs*: now the root of the case is increased, as we have seen, from *six* to *eight*, which is prime to twenty five; and the products of *two*, the share of each sister, of *three*, the share of the husband, and of *one*, the share of the mother, multiplied by the number of gold *mohrs*, are 50, 75, and 25, which, divided by *eight*, give the following shares: to each sister, 6 *mohrs*, 4 *rupees*; to AMRU, 9 *m.* 6 *r.*; to HINDA, 3 *m.* 2 *r.* Had LAILA's estate been *fifty* gold *mohrs*, the distribution would have been thus:

\* Page 20.

M. R.

ZAINEB, - - - -	12, 8.
ABLA, - - - -	12, 8.
AMRU, - - - -	18, 12.
HINDA, - - - -	6, 4.

IT seems needless to give examples of the simple rules for ascertaining the dividends of each *class*; but the passage concerning creditors, at the close of the chapter, is made obscure by extreme brevity, and requires a short illustration. Suppose the assets of AMRU to be *nine* pieces of gold; his debts, *five* pieces to SAAD<sup>A</sup>, and *ten* to AHMED; here the aggregate of the debts, *fifteen*, is composit to *nine*, and their *measures* are *five*, and *three*; so that, by the rule before-mentioned of distribution among *beirs*, AHMED will receive *six*, and SAAD<sup>A</sup>, *three* pieces; but, had the debtor left *thirteen*, which would have been prime to the amount of both debts, then *fifteen*, standing in the place of the *verification*, as they call it, must be the divisor of the several products, arising from the multiplication of *ten* and *five* into thirteen, and the quotients  $8\frac{1}{2}$  and  $4\frac{1}{2}$  will be the respective dividends of AHMED and SAAD<sup>A</sup>.

THE practice of *subtraction* \* arose from the case of ABDUR'RAHMAN and his four wives, decided in the reign of OTHMAN; and the section concerning it will

\* Page 21.

be made clear by a fuller explanation of the example in the text. We have seen, that the widower is entitled to a *moiety*, the mother to a *third*, and the uncle, to the *residue*; so that, if LAILA's estate be divided into *six* parcels, the distribution may be made without a fraction: but if the widower agree to keep the *mahr*, or nuptial present to his wife, which he had never actually paid, instead of his *three sixths* of the whole, the remainder, after deducting the *mahr*, must be divided into *three* parts, of which the mother will have *two*, and the uncle, *one*. So, if the mother agree to take a jewel, or other specifick thing, in lieu of her *two sixths*; or the uncle, a slave or a carriage, in the place of his *sixth* part, the remainder, which, would be *four* parts in the first case, and *five* in the second, must go to the other claimants in proportion to their shares. Again; if AMRU leave his mother FĀTIMA, two sisters by the same mother, LATĪFA and SOLMA, and the son of a paternal uncle, SELĪM; here also the inheritance must be divided, by the rule, into *six* parts: now, if the deceased left a female slave and thirty gold *mohrs*, and, if SOLMA consented to keep the slave instead of her legal share, or a *sixth*, the remainder of the property must then be divided into *five* parcels, six gold *mohrs* in each, of which FĀTIMA and LATĪFA must receive each *one* parcel, and SELIM, the *three* parcels, which remain. It is obvious, that, if the first calculation were made, in the preceding cases, on a supposi-

tion, that the taker of the specifick thing was dead or incapable of inheriting, there would be either a *defect* or an *excess* in some of the allotments to the other claimants.

THERE is no difficulty in the chapter on the *return*\*, except what arises from the *Arabick* idiom, to which the reader is probably by this time habituated; but it is necessary to remark, that, although, by the letter of the *Korán* and the strict rules of law, no *return* can be made to the *widower* or *widow*, yet an equitable practice has prevailed, in modern times, of *returning* to them *on failure of sharers by blood and of distant kindred*. The last case in the chapter can rarely occur; and the result of the calculation (which fills ten pages in the *Persian* work of *Maulavi KÁSÍM*) is, that, of 1440 parcels, the *four* widows take  $(36 \times 5 =)$  180; the *nine* daughters,  $(36 \times 28 =)$  1008; and the *six* female ancestors,  $(36 \times 7 =)$  252; so that 45 parts go to each *widow*, 112 to each *daughter*, and 42 to each *female ancestor*.

THE rights of the *paternal grandfather* have been more disputed than any other point of *Arabian* law; no fewer than *seventy* contradictory decisions having been made concerning them in the reign of *OMAR*; but the dispute is now settled among the *Sunnis* according to the opinion of *ABU HANÍFA*; and the chapter on *division* seems to have been inserted merely from respect to *ABU*

\* Page 22, 23.



YUSUF and MUHAMMED, who dissented on this point from their master\*: it is one of the clearest chapters in the *Sirājiyyah*, and will be useful to us, if the question should arise in a family of *Sbiābs*, who follow, no doubt, the opinions of ALI and ZAID. The case called *acdariyya*, which was decided by the son of THĀBIT, and has acquired such celebrity in *Irāk*, that it is distinguished among the lawyers of that country by the epithet of *algharrā*, or the *luminous*, is a perspicuous example of the grandfather's division in a *double* ratio with the sister: the conjecture, formerly hazarded by myself, that it was named *acdariyya*, because the rules of inheritance are *disturbed* by it in favour of the grandfather, had occurred, I see, to some *Arabs*, and is mentioned by SHARIF without disapprobation.

IT will be necessary to illustrate by examples the chapter on *succession to vested hereditary interests*:† and, first, we may suppose, that ZAID had two wives, named ZAINEB and LATĪFA, and that ZAINEB died possessed of separate property, leaving her husband, her mother ZUHRA, and HINDA, her daughter by a former husband: now the legal shares, in order as the sharers are named, would be a *fourth*, a *sixth*, and a *moiety*; so that regularly the estate should be divided into *twelve* parts, but it is here divided into *four*, because there must be a *return* to ZUHRA and HINDA, in the proportion of their shares, that is

\* Page 24, 25, 26. † Page 27.

as *one* to *three*; but, when ZAID has taken his *fourth*, the *three* fourths, which remain, cannot be distributed in that proportion; and, since *three* and *four* are prime to each other, we therefore multiply *four*, considered as the number of persons entitled to a return, into *four*, the denominator of the husband's *share*, and the square number answers the purpose of integral distribution; for of *sixteen* parcels ZAID will be entitled to *four*, ZUHRA to *three*, and HINDA to *nine*.

SUPPOSE next, that ZAID himself dies, before any distribution actually made, leaving only LATÍFA before-mentioned, his mother BASÍRA, and his father ABID: here *four* parts of the former inheritance having vested in him, the distribution is easy; *one* part going to LATÍFA, as her *fourth*, one also to BASÍRA, as her *third* of the residue, and *two* parts to ABID; in exact proportion to their several claims on his own estate.

THIRDLY, suppose HINDA to die before any actual distribution, leaving the before-named ZUHRA, her grandmother, ZUBAIDA her daughter, and two sons, HÁTIF and BASHAR: now she had a *vested interest* in *nine* parts out of the *sixteen*, and, her own estate being divisible into *six* parts, we observe, that *nine* and *six* are composit to each other, or agree, as the *Arabian* phrase is, *in a third*; so that a third of *six*, or *two*, must be multiplied into *sixteen*, and the product *thirty two* will be the denominator

for both cases; for of *thirty two* parts *nine* will vest in ZUHRA (*six* as mother to ZAINEB, and *three* as grandmother to HINDA,) *twelve* in the two sons, *three* in ZUBAIDA, and *eight* in ZAID's representatives; since, to ascertain the share of each individual, the just-mentioned shares out of *sixteen* must be multiplied by *two*, and those out of *six*, by *three*, which is here called the *measure* of HINDA's vested interest.

LET us fourthly suppose, that ZUHRA also dies before any distribution, leaving her husband CAAB, and two brothers CALIB and TARIF. Now her own estate is arranged by *four*, the husband taking a moiety, and each of the residuaries *one fourth*; but *four* and *nine* are prime to each other; and *four*, therefore, multiplied by *thirty two*, produces an *hundred and twenty eight*, the denominator of both cases: we must then multiply by *four* the shares out of *thirty two*, and by *nine* the shares out of *four*, and the products will be lots of the several claimants; *eight* parcels going to LATIFA, *sixteen* to ABID, *eight* to BASIRA, *forty eight* in moieties to HATIF and BASHAR, *twelve* to ZUBAIDA, *eighteen* to CAAB, and *eighteen* in moieties to CALIB and TARIF.

WE need only add, that, although the conclusion of the chapter before us be obscured by its extreme conciseness, yet it plainly means, that "when any number of

“ heirs die successively before the distribution, if the  
 “ *shares vested* in the last deceased do not quadrate with  
 “ the *arrangement* of his own estate, we must consider  
 “ all those, who died before him, as *one deceased heir*,  
 “ and himself as the *second*, and then work by the pre-  
 “ ceding rules”: to give more examples would be very  
 easy, but the reader would find them insupportably  
 tedious.

ALL controversies on the claims of the *next of kin*,  
 who are neither *sharers* nor *residuarys*, are now at an  
 end \*; for it seems to be settled, that they succeed ac-  
 cording to the order prescribed in our text.

I. ON the *first* class of distant kindred the doctrine of  
 ABU YÚSUF has far more simplicity than that of MUHAM-  
 MED, in which there is an appearance of intricacy; but  
 an attentive reader will find no difficulty in the case re-  
 duced to the form of a table, in which the lowest of the  
 six ranks are supposed to be the claimants of AMRU'S  
 estate †: he will see, that ABU YÚSUF would divide that  
 estate into *fifteen* parts, giving *one* to each of the female,  
 and *two*, by the rule in the *Koràn*, to each of the  
 male, descendants; but that MUHAMMED would arrange  
 it in *sixty* parcels, *twenty-four* of which would go to  
 the representatives of the *three* sons, and *thirty-six* to  
 those of the *nine* daughters; due regard being paid to

\* Page 28, 29. † Page 30, 31. ‡ Page 32, 33.

the *double portion* of the male descendant, so as to bring the shares of the *twelve* claimants to the following order from the left hand, *twelve, eight, four; nine, three, six; six, two, four; three, two, one*. The correctness of this method has, it seems, obtained it a preference over that of ABU YÚSUF, whose practice, however, is followed, on account of its facility, in *Bokhára* and some other places; although of the two different traditions from ABU HANÍFA, that reported by MUHAMMED be the more publicly known and the more generally believed.

THE reader would be unnecessarily fatigued, if we were to exhibit every step of the arithmetical process, by which the estate of AMRU must be distributed, according to the opinion of MUHAMMED, between his *great grandson* by females only, and his *two great granddaughters*, who have the advantage of a male in the line of descent\*; nor does the section concerning the difference of *fides* require elucidation.

II. ON the *second* class, or the *grandfathers* and *grandmothers*, who are excluded from *shares*, we need only sum up the doctrine of our author in the words of SHARÍF:—"The degrees in this case are either equal  
" or unequal; if *unequal*, the nearer is preferred; if  
" *equal*, the preference is given to the person claiming

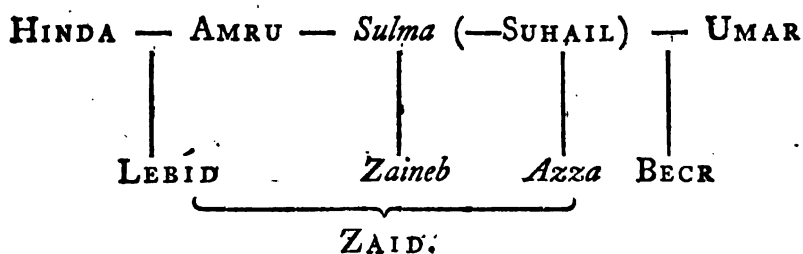
\* Page 34.

“ *through a sharer*; if, there be an *equality* in that respect,  
 “ the *fides* must be the same or different; if different,  
 “ the distribution must be made in *thirds*, the paternal  
 “ side having a *double* allotment; if *the same*, the *sexes*  
 “ of the *roots*, or ancestors, must agree, or not; if they  
 “ agree, the estate must be distributed according to the  
 “ persons of the *branches*, or claimants; if not, accor-  
 “ ding to the *first* rank that differs, as in the preceding  
 “ class\*.”

III. THERE seems no difficulty in the chapter † on the third class of distant kindred; but it must be remarked, that the *branches*, as they are called, from *roots* by the same *father only* are excluded by the *whole blood*; not those by the same *mother only*, who take equally, according to the *Koràn*, in exception to the general rule, without any distinction of sex.

IV. ALTHOUGH the claims of *uncles* and *aunts*, in three cases, be clearly explained in the text, ‡ yet it may not be improper, to subjoin an example from the commentary of *Maulavi KÁSİM*, which the following pedigree will make more intelligible than his dry state of the case:

\* Page 35. † Page 36, 37, 38. ‡ Page 39.



AMRU, having had by HINDA a son, named LEBID, married SULMA, by whom he had a daughter, named ZAINEB: after AMRU's death, SULMA married SUHAIL, to whom she produced AZZA, and after his death, she married UMAR, by whom she became the mother of BECR: now ZAID was the son of LEBID and AZZA; and he died, leaving no heirs but BECR the brother, by the *same mother*, of his mother AZZA, and ZAINEB, who was his *paternal* aunt by the *same father* AMRU, and his *maternal* aunt by the *same mother* SULMA. In this case, the property of ZAID must be divided into *nine* parcels, of which the *paternal* aunt will have *two thirds*; and the remaining *third* will go to the *maternal* uncle and aunt in the ratio of *two* to *one*; so that ZAINEB, in her two characters, will be entitled to *seven ninths*.

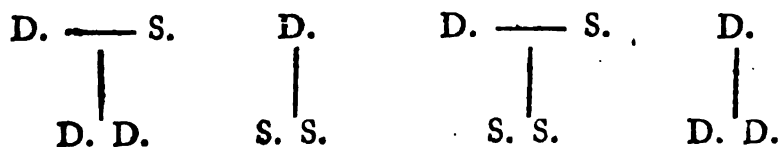
THERE seems no necessity to expatiate on the *children* of uncles and aunts, or on the *cousins*, as we should call them, in different degrees\*; because the text will be sufficiently perspicuous to those, who perfectly understand the preceding sections: but, since a curious case

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\* Page 40, 41.

is put by SHARIF, I am unwilling to suppress it; especially as it will throw light on the whole subject before us. The *father* of AMRU had a brother, ZAID, and two sisters, ZAINEB and AAISHA, by the same father only: his *mother* also had a brother, HARETH, and two sisters by the same father, named HINDA and ASIMA: first, his father and mother died; then, all his *uncles* and *aunts*, leaving the following issue: ZAID left two daughter's daughters, who were also the daughters of ZAINEB's son; AISHA, two sons of her daughter; HARETH, two daughter's sons, who were also the sons of the sons of HINDA; and ASIMA, two daughter's daughters; as in this pedigree:

ZAID. ZAINEB. AAISHA. HARETH. HINDA. ASIMA.



AMRU himself afterwards died, with no heirs but the *grandchildren* of his uncles and aunts: In this case ABU YUSUF would have divided the inheritance into *thirty* parts; *twenty* for the *paternal* side; that is, *five* for each of the sons, and as many for each of the daughters, who have a double relation; and *ten* for the *maternal* side, or *four* for each of the sons, who are doubly related, and *one* for each of the daughters: but MOHAMMED, having divided AMRU's estate into *thirty-six* allotments,



would have given *twenty-four* to the paternal, and *twelve* to the maternal, side; that is, *six* to each of ZAID's granddaughters, as such; and *four* to each of them, as granddaughters of ZAINEB; *two* to each of AAISHA's grandsons; *three* to each grandson of HARETH, as such; and *two* more to each of them, as grandsons of HINDA; while *one thirty-sixth* part would have gone to each of ASIMA's female descendants. The reason of these different distributions will appear from what has preceded; but the arithmetical processes would fill many pages, and would be thought, I am persuaded, unnecessarily prolix.

ON the chapter concerning hermaphrodites,\* I shall make no particular observation; since monstrous births are, I trust, extremely rare in all countries, and the subject is too shocking to be discussed without actual necessity; nor will it answer, I imagine, any useful purpose to relate the old *Arabian* stories, and strange opinions of some lawyers, concerning the longest possible time of gestation;† which is now limited, on the authority of AAISHA, one of MOHAMMED's wives, to *two years*; and, though the *Muselmans* have traditionary accounts of *three, four, or even five* children produced at one birth, yet the practice, we find, is to reserve the share of *one son*; or that of *one daughter*, if, on supposition of her birth, the sum reserved would be larger.‡ The practice of *reservation* for the unborn child is well explained by the case in the text, to which we may

\* Page 42, 43. † Page 44. ‡ Page 45, 46.

now proceed, since the rest of the chapter needs no illustration; unless it be necessary to inform the reader, that a widow ought by law to abstain for a certain time after her husband's death, from the careffes of any other man; and, if she freely confess that she has not abstained, it cannot be certain, that her husband was the father of a child born more than six months after his death. Let us then suppose AMRU to die, leaving a daughter ZAINEB, his mother ASUMA, his father LEBID, and his wife HINDA enseint.\* So that, if a male child be born, AMRU's estate ought regularly to be divided into *twenty-four* parts, but, on the birth of a female, into *twenty-seven*; because, in the first case, the *shares* are an *eighth*, for the widow, and a *sixth* for each of the parents; but, in the second, besides the shares just mentioned, the daughters would have *two-thirds* between them, and it would be the case of *Mimberiyya*.† Now *three* is the *common* measure of *twenty-four* and *twenty-seven*, and the several *measures* of those numbers are *eight* and *nine*, either of which, multiplied into the other *whole* number, gives *two hundred and sixteen* for the product; and that, according to what has preceded, is the number of shares into which the inheritance must be actually divided. In the first case HINDA would have *twenty-seven* shares; LEBID and ASUMA, each *thirty-six*; the posthumous son *seventy-eight*, and ZAINEB, his sister, *thirty-nine*; but, in the

\* P. 47. † P. 15.

second, the widow would have *twenty-four* ; and each of the parents, *thirty-two* ; while the posthumous daughter and her sister would divide the remainder between them, each taking *sixty-four* shares. Should *four* posthumous sons be born, *ninety-nine* shares would go to the widow and both parents ; while the remainder would be divided among the children by the rule before mentioned, ZÁINEB receiving *thirteen* parts, and each of her brothers, *twenty-six* ; but, in the case of a miscarriage, the daughter would be entitled to *a hundred and eight* parts, or a moiety of the whole estate, and the *nine* parts remaining would go to LEBID as residuary heir.

THE time, at which an absent person is presumed in law to be dead, has varied, we see, in different ages \* ; but the modern practice I understand to be this : if ZÁID has been so long absent, that no man can tell whether he be dead or alive, and if *seventy* years have elapsed from the day of his birth, he is presumed to be dead, as to *his own* property, from the end of that term, but, as to his hereditary claims on the property of *another*, from the day of his absence ; so that, in the first case, no person, dying within the seventy years, could have inherited any part of *his* estate ; nor, in the second, could he inherit from any one, who died after the day, when he first was missed. Though the arrangement of an inheritance,

\* Page 48, 49.

on which an absent person may have a claim, be sufficiently clear from what has just preceded, yet a feigned case in illustration of it will not, perhaps, be thought wholly superfluous. If HINDA then die at *Murshedabad*, leaving AMRU her husband, with two sisters of the whole blood, NĀDIRA and SACĪNA, all residing in that city, and a whole brother ZAID, who has long been absent and unheard of, we must consider what effect his life or his death would have on the inheritance: if he be dead, AMRU must have a *moiety* of the estate, and the sisters *two thirds* between them; and, if he be living, the widower will still have a right to his half, but ZAID will take twice as much as either of the sisters. Now, on the first supposition, the assets of HINDA must be divided, as we have shown, into *seven* shares, of which AMRU must have *three*, and each of the sisters, *two*; but, on the second, into *eight* parts, *four* of which go to the husband, and *two* to the brother, while NĀDIRA and SACĪNA can have only *one* a piece; so that the widower has an interest in supposing ZAID alive, and the sisters, in supposing him dead: *fifty-six*, therefore, or the product of *seven* and *eight*, which are *prime* to one another, is the number of shares, into which the estate must be divided; *twenty-four* of them being delivered to AMRU, and *seven* to each of the females, as the least shares to which they can in either event be severally entitled; if ZAID then return to the city, *four* shares more go to

AMRU, and *fourteen* are the right of the brother; but, if his death be proved, or presumed by lapse of time, the *eighteen* reserved shares must be divided equally between SACÍNA and NÁDIRA, to complete their *two sevenths*, which the law gives, in that case, to each of them. The *Persian* commentator has added three cases, in one of which the two first divisors of the assets are *composit* to each other; but the operation in all of them is too easy to require an example.

IN the sections concerning apostates and prisoners of war \*, there seems to be no obscurity; but it is proper to add, that, as the law is now settled, the heirs of an apostate, who were in being at the time of his death, are entitled to their legal shares, whether they were born before or after his apostasy; though a husband or wife cannot succeed to an apostate, because a change of religion is an immediate dissolution of the marriage.

WE are now come to the concluding section, which cannot be better illustrated than by two feigned cases from the *Persian* and *Arabian* comments. 1. ZAID and his daughter ABLA were at sea in the same ship, together with BASHAR, his brother's son, and his great nephew AMRU, son of BASHAR: the ship was lost, and all, who were in it, perished; so that which of them

\* Page 50, 51.

first died, could never be clearly ascertained. Now AMRU left behind him a wife and a daughter; and ABLA had an only son: in this case, by the opinion of ABU HANIFAH and his followers, the four drowned persons are supposed to have perished in the same instant, and their several estates go to their surviving heirs respectively, according to the rules, which have been already explained; but by one of two traditions from ALI, the assets of ZAID being equally divided, and ABLA being supposed to have outlived her father, her son takes one moiety in her right, while the other moiety is conceived at first to have vested in BASHAR, and then in AMRU, between whose widow and daughter it is distributable according to law. 2. KASIM and his younger half brother HASAN were drowned in the same boat, each leaving a mother, a daughter, and a patron, by whom each of them had been manumitted: then, if each of them left *ninety* pieces of gold on shore, the property of each must be severally distributed, according to the HANIFEANS; the daughter of each taking *half*, or *forty-five* pieces; the mother a *sixth*, or *fifteen*, and the manumittor, as residuary, the *thirty* pieces which remain; but according to ALI, the younger brother HASAN being first considered as the survivor, that residue vests in him, and is then distributed, in the just mentioned ratio; *half* of it, or *fifteen*, going to his daughter; a *sixth*, or *five* pieces, to his mother; and *ten*, the residue, to his patron; next,

KĀSĪM being supposed to have survived, the same rule is applied to him; so that the daughter of each takes on the whole *sixty*; the mother, *twenty*; and the manumittor, *ten* pieces of gold.

THE END.





## ERROURS OF THE PRESS.




### TEXT.

- P. 16, L. 4, *for in read is.*  
 P. 17, L. 5, *from the bottom, for it it read if it.*

### COMMENTARY.

- P. 58, L. 4, *after me, omit the comma, and place it after ranfom.*  
 P. 68, L. 10, *read AMRU.*  
 P. 80, L. 5, *before brothers read two.*  
 P. 82, L. 4, *for this read his.*  
 P. 87, L. 7, *from the top, for share read sharer.*  
 P. 98, L. 12, *read son of HINDA.*

### ORIGINAL.

- P. 6, b. last line, *read*   
 P. 11, b. L. 9, 11, *for*  *read* 

## CORRECTIONS.

- P. 60, L. 14, *after allegiance; add, the last of which disabilities relates only to such as are not Muselmáns.*  
 P. 62, L. 11, *after seems, end the paragraph thus; be disabled from succeeding to the property of the deceased, whom he could not in strictness be said to have killed.*  
 P. 96, L. 13, *after that, end the paragraph thus: although the brothers and sisters by the same mother only take equally, according to the Korán, without any distinction of sex, yet that exception to the general rule by no means extends to the issue of such brothers and sisters.*



قَدْ طُبِعَ هَذَا الْكِتَابُ الْهَسْبِيُّ بِالْغَرَائِضِ السِّرَاجِيَّةِ  
بِدَارِ الْأَمَارَةِ بَلَدَةِ كَلْكَتَةِ الْحَكِيمِيَّةِ وَذَلِكَ بِأَمْرِ  
سِرِّ وَلِيمِ يُونُسَ الَّذِي هُوَ أَحَدُ حُكَّامِ الْحَكِيمَةِ الْعَالِيَةِ

السُّلْطَانِيَّةِ

فِي سَنَةِ أَلْفٍ وَمِائَتَيْنِ وَوَاحِدٍ مِنَ الْفَجْرِ النَّبَوِيِّ

## تَصْحِيحُ الْكِتَابِ

عَدَدُ الْأَوْرَاقِ . . .	الصَّحِيحُ . . . . .	السَّقِيمُ . . . . .
١٦ . . . . .	الْإِنَاثَ . . . . .	الْإِنَاثَ . . . . .
١٧ . . . . .	إِبْنِي بِنْتِ بِنْتِ بِنْتِ . . . . .	إِبْنَيْنِ بِنْتِ بِنْتِ بِنْتِ . . . . .
١٧ . . . . .	بِنْتِ ابْنِ بِنْتِ بِنْتِ . . . . .	بِنْتِ ابْنِ بِنْتِ بِنْتِ . . . . .
١٧ . . . . .	بِنْتِي بِنْتِ ابْنِ بِنْتِ . . . . .	بِنْتَيْنِ بِنْتِ ابْنِ بِنْتِ . . . . .
١٧ . . . . .	الْآخِرُ . . . . .	الْآخِرُ . . . . .
١٧ . . . . .	الرَّوَايَتَيْنِ . . . . .	الرَّوَايَتَيْنِ . . . . .
١٧ . . . . .	بِنْتِي . . . . .	بِنْتِي . . . . .
١٧ . . . . .	بِنْتِ . . . . .	بِنْتِ . . . . .
١٧ . . . . .	ابْنِ . . . . .	ابْنِ . . . . .
١٨ . . . . .	أَوْ أَحَدُهَا . . . . .	أَوْ أَحَدُهَا . . . . .
١٩ . . . . .	مِنْ ابْنِ . . . . .	مِنْ ابْنِ . . . . .
١٩ . . . . .	الْآخِرُ . . . . .	الْآخِرُ . . . . .
٢٠ . . . . .	أَلْهَالُ كُلَّهُ . . . . .	أَلْهَالُ كُلَّهُ . . . . .
٢١ . . . . .	وَنِصْفَ سَهْمٍ إِنْ كَانَ . . . . .	وَنِصْفَ إِنْ كَانَ . . . . .
٢٣ . . . . .	ذُكُورَتِهِ . . . . .	ذُكُورَتِهِ . . . . .
٢٣ . . . . .	الْآخِرُ . . . . .	الْآخِرُ . . . . .

قَدْ صُحِّحَ هَذَا الْكِتَابُ بِعَوْنِ اللَّهِ تَعَالَى الْهَلِكِ الْوَهَّابِ

## تَصْحِيحُ الْكِتَابِ

عَدَدُ الْأَوْرَاقِ ..	الصَّحِيحُ	السَّيِّئُ
٦	أَعْتَقَنَ	أَعْتَقَنَ
١٢	مَالِك	مَالِك
١٢	إِنْ وَافَقَ	أَنْ وَافَقَ
١٣	ثُمَّ اضْرِبْ	ثُمَّ اضْرِبْ
١٣	أَخْبِ	أَخْبِ
١٥	أَبَوِي	أَبَوِي
١٥	الرَّابِعُ	الرَّابِعُ
١٥	أَنْ أَقْرَبَ	إِنْ أَقْرَبَ
١٥	الْبَاقُونَ	الْبَاقُونَ
١٥	أَوَّلِيهِمْ	أَوَّلِهِمْ
١٥	فَانْهَ	فَانْهَ
١٦	أَوْكَانَ	أَوْكَانَ
١٦	صِفَةً	صِفَةً
١٦	أَثَلَاتَا	إِثْلَاتَا
١٦	لِلذِّكْرِ	لِلذِّكْرِ
١٦	رَحْبَةُ اللَّهِ	رَحْبَةُ اللَّهِ
١٦	أَثَلَاتَا	إِثْلَاتَا
١٦	وَالْآنَاثُ	وَالْآنَاثُ

لَا تَرِثُ مِنْ أَحَدٍ إِلَّا أَنْ ارْتَدَّ أَهْلُ نَاحِيَةٍ بِأَجْبَعِهِمْ فَحِينَئِذٍ

يَتَوَارَثُونَ

### بَابُ الْأَسِيرِ

حُكْمُ الْأَسِيرِ كَحُكْمِ سَائِرِ الْمُسْلِمِينَ فِي الْبَيْرَاتِ مَا لَمْ  
يَغَارِقَ دِينَهُ فَإِنْ غَارِقَ دِينُهُ فَحُكْمُهُ حُكْمُ الْكَافِرِ فَإِنْ لَمْ يَعْلَمْ  
رِدَّائَهُ وَلَا حَيَاتَهُ وَلَا مَوْتَهُ فَحُكْمُهُ حُكْمُ الْبَاقِيَةِ

فَصَلِّ فِي الْغَرْقِيِّ وَالْخَرْقِيِّ وَالْهَدْمِيِّ  
إِذَا مَاتَ جَبَاعَةً وَلَا يُدْرِي أَيُّهُمْ مَاتَ أَوَّلًا جُعِلُوا كَأَنَّهُمْ  
مَاتُوا مَعًا فَهَالِكُ كُلِّ وَاحِدٍ مِنْهُمْ لَوَرَّثَتْهُ الْأَحْيَاءُ وَلَا يَرِثُ  
بَعْضُ الْأَمْوَاتِ مِنْ بَعْضٍ هَذَا هُوَ الْخُتَارُ وَقَالَ عَلِيٌّ  
وَأَبْنُ مَسْعُودٍ فِي أَحَدِي الزَّوَايِتَيْنِ عَنْهَا يَعْصِمُ  
يَرِثُ مِنْ بَعْضِ الْأَنْفِيَاءِ وَرِثَ كُلِّ وَاحِدٍ مِنْهُمْ مِنْ ضَاحِيَةٍ  
تَهْتِ الْفَرَأِضُ السِّرَاجِيَّةُ يَعُونُ

اللَّهُ تَعَالَى

مِنْ مَالِهِ لَانَ الْبَغُودَ مَيْتَ فِي مَالٍ غَيْرِهِ الْأَصْلَ فِي تَصْحِيحٍ  
 مَسَائِلِ الْبَغُودِ أَنْ تَصَحَّحَ الْبَسْلَةَ عَلَى تَعْدِيرِ حَيَاتِهِ ثُمَّ  
 تَصَحَّحَ الْبَسْلَةَ عَلَى تَعْدِيرِ وَفَاتِهِ وَبَاقِي الْعَمَلِ  
 مَا ذَكَرْنَا فِي الْحَبْلِ

### فَصْلٌ فِي الْبَرْتَدِ

إِذَا مَاتَ الْبَرْتَدُ أَوْ قَتِلَ أَوْ لَحِقَ بِدَارِ الْحَرْبِ وَحَكَمَ الْقَاضِي  
 بِلُحُوقِهِ فَمَا اكْتَسَبَهُ فِي حَالِ إِسْلَامِهِ فَهُوَ لَوَرَثَتِهِ الْمُسْلِمِينَ  
 وَمَا اكْتَسَبَهُ فِي حَالِ الرَّدَّةِ يُوضَعُ فِي بَيْتِ الْهَالِ عِنْدَ  
 أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ وَعِنْدَ هَبَا الْكُتُبَانِ جَمِيعًا لَوَرَثَتِهِ  
 الْمُسْلِمِينَ وَعِنْدَ الشَّافِعِيِّ رَحِمَهُ اللَّهُ الْكُتُبَانِ يُوضَعَانِ  
 فِي بَيْتِ الْهَالِ وَمَا اكْتَسَبَهُ بَعْدَ اللَّحُوقِ بِدَارِ الْحَرْبِ  
 فَهُوَ يَمْنَى بِالْإِجْبَاعِ وَكُسِبَ الْبَرْتَدَةُ جَمِيعًا لَوَرَثَتِهَا الْمُسْلِمِينَ  
 بِإِلَّا خِلَافِ يَبِينَ أَشْحَابِنَا رَحِمَهُمُ اللَّهُ وَأَمَّا الْبَرْتَدُ فَلَا يَرِثُ  
 مِنْ أَحَدٍ لَا مِنْ مُسْلِمٍ وَلَا مِنْ مُرْتَدٍّ مِثْلَهُ وَكَذَلِكَ الْبَرْتَدَةُ  
 لَا تَرِثُ

وَالْبَاقِي لِلدَّابِّ وَهُوَ تِسْعَةُ أَشْهُمٍ لِأَنَّهُ عَصَبَةٌ

### بَابُ الْهَقُودِ

الْهَقُودُ حَيٌّ فِي مَالِهِ حَتَّى لَا يَرِثَ مِنْهُ أَحَدٌ وَيُوقَفَ مَالُهُ حَتَّى  
يَصْرَحَ مَوْتُهُ أَوْ يَهْضِيَ عَلَيْهِ الْهَدَّةُ وَاخْتَلَفَتِ الرِّوَايَاتُ فِي تِلْكَ  
الْهَدَّةِ فَنِي ظَاهِرِ الرِّوَايَةِ أَنَّهُ إِذَا لَمْ يَبْقَ أَحَدٌ مِنْ أَقْرَانِهِ  
حَكَمَ بِمَوْتِهِ وَرَوَى الْحَسَنُ بْنُ زِيَادٍ عَنِ ابْنِ حَنِيفَةَ رَحِمَهُ اللَّهُ  
أَنَّ تِلْكَ الْهَدَّةَ مِائَةٌ وَعِشْرُونَ سَنَةً مِنْ يَوْمٍ وَلَدَ فِيهِ وَقَالَ  
سُحَيْدٌ مِائَةٌ وَعِشْرِينَ سَنَةً وَقَالَ أَبُو يُونُسَ مِائَةٌ وَخَمْسَ سِنِينَ  
وَقَالَ بَعْضُهُمْ تِسْعُونَ سَنَةً وَعَلَيْهِ الْغَثَوِيُّ وَقَالَ بَعْضُهُمْ  
مَالُ الْهَقُودِ مَوْقُوفٌ إِلَى اجْتِهَادِ الْإِمَامِ وَمَوْقُوفٌ الْحَكَمُ  
فِي حَقِّ غَيْرِهِ حَتَّى يُوقَفَ نَصِيبُهُ مِنْ مَالِ مُوَرِّثِهِ كَمَا فِي  
الْحَبْلِ فَإِذَا مَضَتْ الْهَدَّةُ وَحَكَمَ بِمَوْتِهِ فَهَالَهُ لَوْرَثَتِهِ  
الْبُجُودِينَ عِنْدَ الْحَكَمِ بِمَوْتِهِ وَمَا كَانَ مَوْقُوفًا لِأَجَلِهِ مِنْ  
مَالِ مُوَرِّثِهِ يَرَدُّ إِلَى وَارِثِ مُوَرِّثِهِ الَّذِي وَقَفَ ذَلِكَ الْهَقُودُ



لِلْمَرْأَةِ سَبْعَةٌ وَعِشْرُونَ وَلِكُلِّ وَاحِدٍ مِنَ الْأَبْوَيْنِ سِتَّةٌ  
وَتِلَاثُونَ وَعَلَى تَقْدِيرِ الْأُنْثَى لِلْمَرْأَةِ أَرْبَعَةٌ وَعِشْرُونَ وَلِكُلِّ  
وَاحِدٍ مِنَ الْأَبْوَيْنِ اثْنَانِ وَتِلَاثُونَ فَيُعْطَى لِلْمَرْأَةِ أَرْبَعَةٌ  
وَعِشْرُونَ وَيُوقَفُ مِنْ نَصِيبِهَا ثَلَاثَةُ أَسْمَاءٍ وَيُوقَفُ مِنْ نَصِيبِ  
كُلِّ وَاحِدٍ مِنَ الْأَبْوَيْنِ أَرْبَعَةٌ أَسْمَاءٌ وَيُعْطَى لِلْبَنَاتِ ثَلَاثَةُ عَشَرَ  
سَهْمًا لِأَنَّ الْهَوْ قُوفَ فِي حَقِّهَا نَصِيبٌ أَرْبَعَةُ بَنَيْنَ عِنْدَ  
أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ وَإِذَا كَانَ الْبَنُونَ أَرْبَعَةً فَنَصِيبُهَا سَهْمٌ  
وَأَرْبَعَةُ أَتْسَاعِ سَهْمٍ مِنْ أَرْبَعَةٍ وَعِشْرِينَ مَضْرُوبٌ فِي تِسْعَةِ فَصَارَ  
ثَلَاثَةُ عَشَرَ سَهْمًا فَهِيَ لَهَا وَالْبَاقِي مَوْقُوفٌ وَهُوَ مِائَةٌ وَخَمْسَةٌ  
عَشَرَ سَهْمًا فَإِنْ وَلَدَتْ بِنْتًا وَاحِدَةً أَوْ أَكْثَرَ فَجَمِيعُ الْهَوْ قُوفَ  
لِلْبَنَاتِ وَإِنْ وَلَدَتْ ابْنًا وَاحِدًا أَوْ أَكْثَرَ فَيُعْطَى لِلْمَرْأَةِ وَالْأَبْوَيْنِ  
مَا كَانَ مَوْقُوفًا مِنْ نَصِيبِهِمْ وَمَا بَقِيَ يُقَسَّمُ بَيْنَ الْأَوْلَادِ  
وَإِنْ وَلَدَتْ مِثْلًا فَيُعْطَى لِلْمَرْأَةِ وَالْأَبْوَيْنِ مَا كَانَ مَوْقُوفًا مِنْ  
نَصِيبِهِمْ وَلِلْبَنَاتِ الْيَتَامِ التَّصْفِ فَهُوَ خَمْسَةٌ وَتِسْعُونَ سَهْمًا  
وَالْبَاقِي

فَالْحَاصِلُ تَصْحِيحُ الْمَسْئَلَةِ ثُمَّ اضْرِبْ نَصِيبَ مَنْ كَانَ لَهُ شَيْءٌ  
مِنْ مَسْئَلَةِ ذِكْوَرَتِهِ فِي مَسْئَلَةِ أَنْوَتِهِ أَوْ فِي وَفَّقَهَا ثُمَّ مَنْ كَانَ  
لَهُ شَيْءٌ مِنْ مَسْئَلَةِ أَنْوَتِهِ فِي مَسْئَلَةِ ذِكْوَرَتِهِ أَوْ فِي وَفَّقَهَا  
كَمَا ذَكَرْنَا فِي الْخَنْثَى ثُمَّ انْظُرْ فِي الْحَاصِلَيْنِ مِنَ الضَّرْبِ  
أَيُّهَا أَقَلُّ يُعْطَى لِدَلِكِ الْوَارِثِ وَالْفَضْلُ بَيْنَهُمَا مَوْتُوفٍ مِنْ  
نَصِيبِ دَلِكِ الْوَارِثِ فَإِذَا ظَهَرَ الْحَبْلُ فَإِنْ كَانَ مُسْتَحِقًّا  
لِجَمِيعِ الْمَوْتُوفِ فِيهَا وَإِنْ كَانَ مُسْتَحِقًّا لِلْبَعْضِ فَيَأْخُذُ  
دَلِكَ الْبَعْضَ وَالْبَاقِي مَقْسُومٌ بَيْنَ الْوَرِثَةِ فَيُعْطَى لِكُلِّ  
وَاحِدٍ مِنَ الْوَرِثَةِ مَا كَانَ مَوْتُوفًا مِنْ نَصِيبِهِ كَمَا إِذَا تَرَكَ بَنَاتًا  
وَأَبَوَيْنِ وَامْرَأَةً حَامِلَةً فَالْمَسْئَلَةُ مِنْ أَرْبَعَةٍ وَعِشْرِينَ عَلَى  
تَقْدِيرِ أَنَّ الْحَبْلَ ذَكَرُوا مِنْ سَبْعَةٍ وَعِشْرِينَ عَلَى تَقْدِيرِ أَنَّهُ  
أُنْثَى وَيَبْنِي عَدَدِي تَصْحِيحُ الْمَسْئَلَتَيْنِ تَوَافُقٌ بِالثَّلَاثِ  
فَإِذَا اضْرَبَ وَفَّقَ أَحَدَهُمَا فِي جَمِيعِ الْآخِرِ صَارَ الْحَاصِلُ مَاتَيْنِ  
وَسِتَّةَ عَشْرَ سَهَابًا مِنْهَا تَصَحَّحَ الْمَسْئَلَةُ وَعَلَى تَقْدِيرِ ذِكْوَرَتِهِ

وَلَمْ تَكُنِ الْمَرْأَةُ أَقْرَبَ بِإِنْقِضَاءِ الْعِدَّةِ يَرِثُ وَيُورِثُ عَنْهُ وَإِنْ  
جَاءَتْ بِالْوَلَدِ لَآ كَثْرَ مِنْ أَكْثَرِ مَدَّةِ الْحَبْلِ لَا يَرِثُ وَلَا يُورِثُ  
عَنْهُ وَإِنْ كَانَ الْحَبْلُ مِنْ غَيْرِهِ وَجَاءَتْ بِالْوَلَدِ لِسِتَّةِ أَشْهُرٍ أَوْ  
أَقَلَّ يَرِثُ وَإِنْ جَاءَتْ بِالْوَلَدِ لَآ كَثْرَ مِنْ أَقَلِّ مَدَّةِ الْحَبْلِ  
لَا يَرِثُ وَطَرِيقُ مَعْرِفَةِ حَيَاةِ الْحَبْلِ وَقْتُ الْوِلَادَةِ أَنْ يَوْجَدَ  
مِنْهُ مَا يَعْلَمُ بِهِ الْحَيَاةُ كَصَوْتٍ أَوْ غَطَاسٍ أَوْ بُكَاءٍ أَوْ ضَحْكٍ أَوْ  
تَحَرُّكِ بَعْضِ أَغْضِيَائِهِ فَإِنْ خَرَجَ الْوَلَدُ ثُمَّ مَاتَ لَا يَرِثُ وَإِنْ خَرَجَ  
أَكْثَرُهُ ثُمَّ مَاتَ يَرِثُ فَإِنْ خَرَجَ الْوَلَدُ مُسْتَقِيمًا فَلَا يُعْتَبَرُ  
صَدْرُهُ أَغْنَى أَنْ أَخْرَجَ صَدْرُهُ كَلِمَةَ يَرِثُ وَإِنْ خَرَجَ مِنْ كَوْسًا  
فَالْبُعْتَرُ سَرَّتْهُ الْأَصِيلُ فِي تَصْحِيحِ مَسَائِلِ الْحَبْلِ أَنْ  
تُصَحِّحَ الْهَسْلَةَ عَلَى تَقْدِيرَيْنِ أَحَدُهُمَا عَلَى تَقْدِيرِ أَنْ  
الْحَبْلُ ذَكَرٌ وَعَلَى تَقْدِيرِ أَنَّهُ أُنْثَى ثُمَّ تَنْظُرِينَ تَصْحِيحِ  
الْهَسْلَتَيْنِ فَإِنْ تَوَافَقَا فَاضْرِبْ وَقْتُ أَحَدِيهِمَا فِي جَمِيعِ  
الْآخَرِي وَأَنْ تَبَايَنَا فَاضْرِبْ كُلَّ أَحَدِيهِمَا فِي جَمِيعِ الْآخَرِي  
فَالْحَاصِلُ

## بَابُ فِي الْحَمْلِ

أَكْثَرُ مَدَّةِ الْحَمْلِ سِتَانِ عِنْدَ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ  
 وَأَصْحَابِهِ وَعِنْدَ لَيْثِ بْنِ سَعْدٍ الْفَهْمِيُّ رَحِمَهُ اللَّهُ ثَلَاثُ  
 سِنِينَ وَعِنْدَ الشَّافِعِيِّ رَحِمَهُ اللَّهُ أَرْبَعُ سِنِينَ وَعِنْدَ الزَّهْرِيِّ  
 رَحِمَهُ اللَّهُ سَبْعُ سِنِينَ وَأَقْلَاهَا سِتَّةُ أَشْهُرٍ وَيُوقَفُ لِلْحَمْلِ  
 عِنْدَ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ نَصِيبُ أَرْبَعَةِ بَنِينَ أَوْ نَصِيبُ أَرْبَعِ  
 بَنَاتٍ إِيَّاهُمَا أَكْثَرُ وَيُعْطَى لِبَقِيَّةِ الْوَرَثَةِ أَقْلُ الْأَنْصِبَاءِ وَعِنْدَ  
 مُحَمَّدٍ رَحِمَهُ اللَّهُ يُوقَفُ نَصِيبُ ثَلَاثَةِ بَنِينَ أَوْ ثَلَاثِ بَنَاتٍ  
 إِيَّاهُمَا أَكْثَرُ رَوَاهُ عَنْهُ لَيْثُ بْنُ سَعْدٍ رَضِيَ اللَّهُ عَنْهُ فِي رِوَايَةٍ  
 أُخْرَى نَصِيبُ ابْنَيْنِ وَاحِدٍ مِنَ الرِّوَايَتَيْنِ عَنْ أَبِي يُوسُفَ  
 رَحِمَهُ اللَّهُ رَوَاهُ عَنْهُ هِشَامٌ وَرَوَى الْخَصَافُ عَنْ أَبِي يُوسُفَ  
 رَحِمَهُ اللَّهُ أَنَّهُ يُوقَفُ نَصِيبُ ابْنٍ وَاحِدٍ أَوْ بِنْتٍ وَاحِدَةٍ وَعَلَيْهِ  
 الْقَتَوِيُّ وَيُؤْخَذُ الْكَفِيلُ عَلَى قَوْلِهِ وَإِنْ كَانَ الْحَمْلُ مِنَ  
 الْبَيْتِ وَجَاءَتْ بِالْوَلَدِ لَتَبَامٍ أَكْثَرُ مَدَّةِ الْحَمْلِ أَوْ أَقْلُ مِنْهَا

أَرْبَاعِ سَهْمٍ لِأَنَّ الْخُنْثَى يَسْتَحِقُّ سَهْمًا إِنْ كَانَ ذَكَرًا وَ  
نِصْفَ إِنْ كَانَ أُنْثَى وَهَذَا مُتَيَقِّنٌ فِي اخْتِذِ نِصْفِ مَجْبُوعِ  
النَّصِيبِيِّينَ أَوْ نَقُولُ يَأْخُذُ النِّصْفَ الْبَتِّيَّتَيْنِ مَعَ نِصْفِ  
النِّصْفِ الْبَتْنَارِ فِيهِ فَصَارَ لَهُ ثَلَاثَةُ أَرْبَاعِ سَهْمٍ لِأَنَّهُ يُعْتَبَرُ  
السَّهْمَ وَالْعَوْلَ وَتَصَحَّ مِنْ تِسْعَةِ أَوْلَادِ بْنِ سَهَانَ وَلِلْبَنَاتِ  
سَهْمٌ وَلِلْخُنْثَى نِصْفُ النَّصِيبِيِّينَ وَهُوَ سَهْمٌ وَنِصْفُ سَهْمٍ وَقَالَ  
مُحَمَّدٌ رَحِمَهُ اللَّهُ يَأْخُذُ الْخُنْثَى خُمُسِي الْبَالِ إِنْ كَانَ ذَكَرًا  
وَرُبْعَ الْبَالِ إِنْ كَانَ أُنْثَى فَيَأْخُذُ نِصْفَ النَّصِيبِيِّينَ وَذَلِكَ  
خُمُسٌ وَثَمَنٌ بِاعْتِبَارِ الْحَالِيَيْنِ وَتَصَحَّ مِنْ أَرْبَعِينَ وَهُوَ  
التَّجْتَبَعُ مَنْ ضَرَبَ أَحَدَ الْبُسْلَتَيْنِ وَهِيَ الْأَرْبَعَةُ  
فِي الْآخَرِي وَهِيَ الْخُمْسَةُ ثُمَّ الْبُلُغُ فِي الْحَالَتَيْنِ فَبِنْ  
كَانَ لَهُ شَيْءٌ مِنَ الْخُمْسَةِ فَضَرَبَ فِي الْأَرْبَعَةِ وَمَنْ كَانَ لَهُ  
شَيْءٌ مِنَ الْأَرْبَعَةِ فَضَرَبَ فِي الْخُمْسَةِ فَصَارَ لِلْخُنْثَى  
ثَلَاثَةُ عَشَرَ وَلِلْبَنِ ثِنَايَةَ عَشَرَ وَلِلْبَنَاتِ تِسْعَةُ سَهْمٍ  
بَابُ فِي

كُلُّ فَرِيقٍ يَقْسَمُ عَلَيَّ أَبَدًا نِ فَرِيقُهُمْ مَعَ اعْتِبَارِ عَدَدِ  
 الْجِهَاتِ فِي الْفُرُوعِ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللَّهُ يَقْسَمُ الْهَالِ  
 عَلَيَّ أَوَّلَ بَطْنٍ اخْتَلَفَ مَعَ اعْتِبَارِ عَدَدِ الْفُرُوعِ وَالْجِهَاتِ  
 فِي الْأَصُولِ كَمَا فِي الصَّنْفِ الْأَوَّلِ ثُمَّ يَنْتَقِلُ هَذَا الْحُكْمُ إِلَى  
 جِهَةِ عِمْرَةَ أَبِيهِ وَخَوَلَتِهَا ثُمَّ إِلَى أَوْلَادِهِمْ ثُمَّ إِلَى جِهَةِ عِمْرَةَ  
 أَبِي أَبِي أَبِيهِ وَخَوَلَتِهَا ثُمَّ إِلَى أَوْلَادِهِمْ كَمَا فِي الْعَصَبَاتِ  
 بَابُ الْخُنْثِيِّ

لِلْخُنْثِيِّ الْبَشَرُ كُلُّ أَقْلٍ النَّصِيبِينَ اعْنِي اسْوَأَ الْحَالَتَيْنِ  
 عِنْدَ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ وَأَصْحَابِهِ وَهُوَ قَوْلُ عَامَّةِ الصَّحَابَةِ  
 رَضِيَ اللَّهُ عَنْهُمْ وَعَلَيْهِ الْفَتْوَى كَمَا إِذَا تَرَكَ ابْنًا وَبِنْتًا وَخُنْثِيًّا  
 فَلِلْخُنْثِيِّ نَصِيبٌ بِنْتٍ لِأَنَّهُ مُتَيَقَّنٌ وَعِنْدَ عَامِرِ الشَّعْبِيِّ  
 وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا لِلْخُنْثِيِّ نَصِيبٌ  
 النَّصِيبِينَ بِالْمُنَازَعَةِ وَاخْتَلَفَانِي تَخْرِيجُ قَوْلِ الشَّعْبِيِّ قَالَ  
 أَبُو يُونُسَ لِلدَّيْنِ سَهْمٌ وَلِلْبِنْتِ نِصْفُ سَهْمٍ وَلِلْخُنْثِيِّ ثَلَاثَةُ

الْعَمَّ وَأَبْنِ الْعَبَّةِ كَالْهَبَالِابِ وَأُمِّ أَوْلَابِ الْهَالِ كُلِّهِ لَبْنِ  
الْعَمِّ وَإِنْ كَانَ أَحَدُهُمَا لَابٍ وَأُمٌّ وَالْآخَرُ لَابٍ كَانَ الْهَالُ كُلُّهُ  
لَبْنٍ كَانَتْ لَهُ قُوَّةُ الْقَرَابَةِ فِي ظَاهِرِ الرِّوَايَةِ قِيَاسًا عَلَيَّ  
خَالَةِ لَابٍ مَعَ كَوْنِهَا وَلَدٌ لِي الرَّحِمِ تَكُونُ هِيَ أَوْلَى  
لِقُوَّةِ الْقَرَابَةِ مِنَ الْخَالَةِ لِأَنَّ مَعَ كَوْنِهَا وَلَدًا لِي الْوَارِثُ لَنْ التَّرْجِيحِ  
بِعَنِّي فِيهِ وَهُوَ قُوَّةُ الْقَرَابَةِ أَوْلَى مِنَ التَّرْجِيحِ فِي غَيْرِهِ وَهُوَ  
الْأَدْلَى بِالْوَارِثِ وَقَالَ بَعْضُهُمُ الْهَالُ كُلُّهُ لَبْنُ الْعَمِّ لِأَنَّهَا  
وَلَدُ الْعَصْبَةِ وَإِنْ اسْتَوَوْا فِي الْقُرْبِ وَلَكِنْ اخْتَلَفَ حَيْزُ قَرَابَتِهِمْ  
لَا عِتَابَ لَهُمَا الْقُوَّةُ الْقَرَابَةُ وَلَا لَوْلَا الْعَصْبَةُ فِي ظَاهِرِ الرِّوَايَةِ  
قِيَاسًا عَلَيَّ عَمَّةٍ لَابٍ وَأُمٍّ مَعَ كَوْنِهَا ذَاتُ الْقَرَابَتَيْنِ وَلَدُ الْوَارِثِ  
مِنَ الْجِهَتَيْنِ وَأَمَّا هَذَاتُ فَرَضٍ لَيْسَتْ هِيَ بِأَوْلَى مِنَ الْخَالَةِ  
لِأَنَّ لَكِنِ الثَّلَاثِينَ لَبْنٌ يَدُلِّي بِقَرَابَةِ الْأَبِ فَيُعْتَبَرُ فِيهِمْ قُوَّةُ  
الْقَرَابَةِ ثُمَّ وَلَدُ الْعَصْبَةِ وَالثَّلَاثُ لَبْنٌ يَدُلِّي بِقَرَابَةِ الْأُمِّ وَيُعْتَبَرُ  
فِيهِمْ قُوَّةُ الْقَرَابَةِ ثُمَّ عِنْدَ أَبِي يُوسُفَ رَحِمَهُ اللَّهُ مَا أَصَابَ  
كُلَّ فَرِيقٍ

لَابٍ وَمَنْ كَانَ لَابٍ أُولَىٰ مِنْ كَانَ لَامٌ كُنُوا وَأَنَاثًا  
وَأَنْ كَانُوا كُنُوا وَأَنَاثًا وَاسْتَوَتْ قَرَابَتُهُمْ فَلِلَّذِي كَرِهَ مَثَلُ  
حَظِّ الْأُنثَيَيْنِ كَعَمٍّ وَعَمَّةٍ كَلَاهُمَا لَامٌ أَوْ خَالَ وَخَالَتُهَا  
لَابٌ وَأُمُّ أَوْلَابٍ أَوْلَامٌ فَإِنْ كَانَ حَيْزٌ قَرَابَتُهُمْ مُخْتَلِفًا فَلَا  
اعْتِبَارَ لِقَوَّةِ الْقَرَابَةِ كَعَمَّةٍ لَابٌ وَأُمُّ وَخَالَتُ لَامٌ أَوْ خَالَتُ لَابٌ وَأُمُّ  
وَعَمَّةٍ لَامٌ فَالثَّلَاثَانِ لِقَرَابَةِ الْأَبِ وَهُوَ نَصِيبُ الْأَبِ وَالثَّلَاثُ  
لِقَرَابَةِ الْأُمِّ وَهُوَ نَصِيبُ الْأُمِّ ثُمَّ مَا أَصَابَ كُلَّ فَرِيقٍ يَتَسَمَّى بِهِمْ  
كَالْوَالِدِ حَيْزُ قَرَابَتِهِمْ

### فَصْلٌ فِي أَوْلَادِهِمْ وَأَحْكَامِهِمْ

الْحَكْمُ فِيهِمْ كَالْحَكْمِ فِي الصِّنْفِ الْأَوَّلِ اعْنِي أَوْلَادَهُمْ  
بِالْبَيَرَاتِ أَقْرَبُهُمْ إِلَى الْبَيْتِ مِنْ أَيِّ جِهَةٍ كَانَ وَإِنْ اسْتَوَوْا  
فِي الْقُرْبِ وَكَانَ حَيْزُ قَرَابَتِهِمْ مُتَّحِدًا فَمِنْ كَانَ لَهُ قُوَّةُ  
الْقَرَابَةِ فَهُوَ أُولَىٰ بِالْأَجْمَاعِ وَإِنْ اسْتَوَوْا فِي الْقُرْبِ وَالْقَرَابَةِ وَكَانَ  
حَيْزُ قَرَابَتِهِمْ مُتَّحِدًا فَوَلَدُ الْعَصْبَةِ أُولَىٰ مِنْ لَا يَكُونُ كَبْنَتِ



أَنَلَا ثَابَعْتَبَارِ اسْتَوَاءِ أَصُولِهِمْ فِي قِسْمَةِ الْأَبَاءِ وَالْبَقَايِ يَمِينٌ  
 فُرُوعِ بَنِي الْأَعْيَانِ أَنْصَافًا بِاعْتِبَارِ عَدَدِ الْفُرُوعِ فِي الْأَصُولِ  
 نَصْفُهُ لِبْنَتِ الْأَخِ نَصِيبُ أَيْيَهَا وَالنَّصْفُ الْآخَرَيْنِ وَلَدَيِ  
 الْأَخْتِ لِلذَّكَرِ مِثْلَ حَظِّ الْأُنثَيَيْنِ بِاعْتِبَارِ الْأَيْدِيَانِ وَتَصَحَّ  
 مِنْ تِسْعَةٍ وَلَوْ تَرَكَ ثَلَاثَ بَنَاتٍ بَنِي أَخُوهُ مُتَفَرِّقِينَ  
 بِهَذِهِ الصُّورَةِ

بنت ابن أخ لأب وأم    بنت ابن أخ لأب    بنت ابن أخ لأم  
 الْهَالُ كُلُّهُ لِبْنَتِ ابْنِ الْأَخِ لِأَبٍ وَأُمٍّ بِالِاتِّفَاقِ لِأَنَّهَا وَلَدُ الْعَصْبَةِ  
 وَلَهَا أَيْضًا قُوَّةُ الْقَرَابَةِ

#### فَصْلٌ فِي الصِّنْفِ الرَّابِعِ

الْحُكْمُ فِيهِمْ أَنَّهُ إِذَا انْفَرَدَ وَاحِدٌ مِنْهُمْ اسْتَحَقَّ الْهَالُ كُلُّهُ  
 لِعَدَمِ الْمَزَاجِ وَأَنَّ الْجَنْبَعَيْنِ كَانَ حِيزَ قَرَابَتِهِمْ مُتَّحِدًا  
 كَالْعَمَاتِ وَالْأَعْمَامِ لِأَمِّ وَالْأَخْوَالِ وَالْخَالَاتِ فَالْقَوِيُّ مِنْهُمْ  
 أَوْلَى بِالْأَجْبَاعِ أَعْنِي مَنْ كَانَ لِأَبٍ وَلَمْ أُولَى مِنْ كَانَ  
 لِأَبٍ وَمِنْ

وَبَعْضُهُمْ أَوْلَادُ أَصْحَابِ الْفِرَافِصِ وَاخْتَلَفَتْ قَرَابَتُهُمْ

فَأَبُو يُونُسَ رَحِمَهُ اللَّهُ يُعْتَبَرُ الْأَقْوَى وَمُحَمَّدٌ رَحِمَهُ اللَّهُ يُقَسِّمُ

الْبَالُ عَلَى الْأُخُوَّةِ وَالْأَخَوَاتِ نَصْفَيْنِ مَعَ اعْتِبَارِ عَدَدِ الْفُرُوعِ

وَالْجِهَاتِ فِي الْأَصُولِ فَمَا أَصَابَ كُلَّ فَرِيقٍ يُقَسِّمُ بَيْنَ فُرُوعِهِمْ

كَمَا فِي الصَّنْفِ الْأَوَّلِ كَبْنَتْ بِنْتُ الْأَخْتِ لَأَبٍ وَأُمٍّ أُولَى مِنْ

ابْنِ بِنْتِ الْأَخِ لِأَبٍ عِنْدَ أَبِي يُونُسَ رَحِمَهُ اللَّهُ لِقُوَّةِ الْقَرَابَةِ

وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللَّهُ يُقَسِّمُ الْبَالُ بَيْنَهُمَا نَصْفَيْنِ بِاعْتِبَارِ

الْأَصُولِ كَمَا إِذَا تَرَكَ ثَلَاثَ بَنَاتٍ أُخُوَّةٍ مُتَفَرِّقِينَ وَثَلَاثَ

بَنِينَ وَثَلَاثَ بَنَاتٍ أُخَوَاتٍ مُتَفَرِّقَاتٍ بِهَذِهِ الصُّورَةِ

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اخ لابوام اخ لاب اخ لام اخت لابوام اخت لاب اخت لام  
بنت بنت بنت ابن بنت ابن بنت ابن بنت

عِنْدَ أَبِي يُونُسَ يُقَسِّمُ كُلُّ الْبَالِ بَيْنَ فُرُوعِ بَنِي الْأَعْيَانِ ثُمَّ

بَيْنَ فُرُوعِ بَنِي الْعَلَاتِ ثُمَّ بَيْنَ فُرُوعِ بَنِي الْأَخْيَافِ لِلدَّكْرِ

مِثْلَ حَظِّ الْأُنثَيَيْنِ أَرْبَاعًا بِاعْتِبَارِ الْأَبْدَانِ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ

اللَّهُ يُقَسِّمُ ثُلُثُ الْبَالِ بَيْنَ فُرُوعِ بَنِي الْأَخْيَافِ عَلَى التَّسْوِيَةِ

بِهِمْ يُقَسِّمُ الْهَالَ عَلَى أَوَّلِ بَطْنٍ اخْتَلَفَ كِبَانِي الصَّنْفِ  
 الْأَوَّلِ وَإِنْ اخْتَلَفَتْ قَرَابَتُهُمْ فَالثَّلَاثَانِ لِقَرَابَةِ الْأَبِ وَهُوَ نَصِيبُ  
 الْأَبِ وَالثَّلَاثُ لِقَرَابَةِ الْأُمِّ وَهُوَ نَصِيبُ الْأُمِّ ثُمَّ مَا أَصَابَ كُلَّ  
 فَرِيقٍ يُقَسِّمُ بَيْنَهُمْ كَمَا لَوْ اتَّحَدَتْ قَرَابَتُهُمْ

### فَصْلٌ فِي الصَّنْفِ الثَّالِثِ

الْحُكْمُ فِيهِمْ كَالْحُكْمِ فِي الصَّنْفِ الْأَوَّلِ أَعْنِي أَوْلَاهُمْ  
 بِالْبَيْرَاتِ أَقْرَبُهُمْ إِلَى الْبَيْتِ وَإِنْ اسْتَوَوْا فِي الْقُرْبِ فَوَلَدُ  
 الْعَصَبَةِ أَوْلَى مِنْ وَلَدِ دَوِي الْأَرْحَامِ كَبْنَتِ ابْنِ أَخٍ وَابْنِ  
 بَيْتٍ أُمِّتٍ كَالْأَهْلِ الْأَبِ وَأُمِّ الْأَبِ وَأَوَّادِ الْأَبِ وَأُمِّ الْأَخْرِ  
 لَابِ الْهَالَ كُلَّهُ لِبْنَتِ ابْنِ الْأَخِ لِأَنَّهَا وَلَدُ الْعَصَبَةِ وَلَوْ كَانَ  
 لَأُمِّ بَيْنَهُمَا لِدٌّ كَرِمْ مِثْلُ حَظِّ الْأُنثَيَيْنِ عِنْدَ أَبِي يُوسُفَ رَحِمَهُ  
 اللَّهُ اثْنَاثًا بِاعْتِبَارِ الْأَبْدَانِ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللَّهُ أَنْصَافًا  
 بِاعْتِبَارِ الْأَصُولِ وَإِنْ اسْتَوَوْا فِي الْقُرْبِ وَلَيْسَ فِيهِمْ وَلَدُ عَصَبَةٍ  
 أَوْ كَانَ كُلُّهُمْ أَوْلَادُ الْعَصَبَاتِ أَوْ كَانَ بَعْضُهُمْ أَوْلَادُ الْعَصَبَاتِ  
 وَبَعْضُهُمْ

عند أبي يوسف المال بينهم اثلاثا وح صار البيت كانه ترك  
 اربع بنات وابنا فيكون ثلثاه للبنتين وثلثه لابن وعند  
 محمد رجه الله المال بينهم علي ثمانية وعشرين سها  
 للبنتين اثنان وعشرون سها ستة عشر من قبل أبيهما  
 وستة أسهم من قبل أمهما ولابن ستة أسهم من قبل أمه

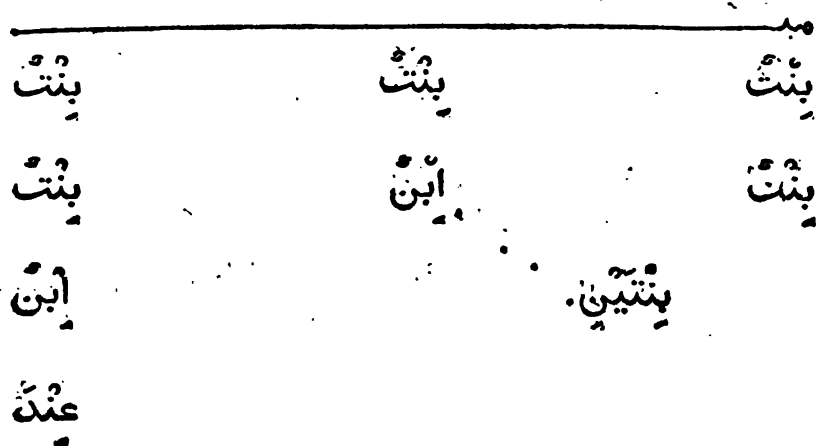
### فصل في الصنف الثاني

أولاهم بالبيراث أقربهم إلى البيت من أي جهة كان  
 وعند الاستواء في درجات القرب فمن كان يدلي إلى  
 البيت بوارث فهو أولي عند أبي سهل الغرائضي و  
 أبي فضيل الخفاف وعلي ابن عيسى البصري ولا تفضيل  
 له عند أبي سليمان الجرجاني وأبي علي البيهقي البستي  
 وإن استوت منازلهم وليس فيهم من يدلي بوارث أو كان  
 كلهم يدلون بوارث فإن اتفقت صفة من يدلون واتحدت  
 قرابتهم فالقسمة علي أبدانهم وإن اختلفت صفة من يدلون

أَيُّهَا النَّصَفُ الْآخِرُ لِابْنَيْ بِنْتِ بِنْتِ الْبِنْتِ نَصِيبُ أُمِّهَا  
 وَتَصَحَّحَ مِنْ ثَبَانِيَّةٍ وَعِشْرِينَ وَقَوْلُ مُحَمَّدٍ رَحِمَهُ اللَّهُ أَشْهُرُ  
 الرَّوَائِثَيْنِ عَنْ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ فِي جَمِيعِ أَحْكَامِ  
 ذِي الْأَرْحَامِ وَهُوَ قَوْلُ أَبِي يُوسُفَ الْأَوَّلِ ثُمَّ رَجَعَ فَقَالَ  
 لِأَعْبَرَةَ لِلْأَصُولِ الْبِنْتِ

### فَصْلٌ

عَلِمْنَا أَنَّ رَحِمَهُ اللَّهُ يَعْتَبِرُونَ الْجِهَاتِ فِي التَّوْرِيثِ غَيْرَ أَنَّ  
 أَبَا يُوسُفَ رَحِمَهُ اللَّهُ يَعْتَبِرُ الْجِهَاتِ فِي أَبْدَانِ الْفُرُوعِ وَ  
 مُحَمَّدٌ رَحِمَهُ اللَّهُ يَعْتَبِرُ الْجِهَاتِ فِي الْأَصُولِ كَمَا إِذَا تَرَكَ  
 بِنْتِي بِنْتِ بِنْتٍ وَهَبًا أَيْضًا بِنْتًا ابْنِ بِنْتٍ وَأَبْنِ بِنْتِ بِنْتِ  
 بِهَذِهِ الصُّورَةِ



وَكَذَلِكَ مُحَمَّدٌ رَحِمَهُ اللَّهُ يَأْخُذُ الصِّفَةَ مِنَ الْأَصْلِ حَالَةً

الْقِسْبَةِ وَالْعَدَدَ مِنَ الْفُرُوعِ كَمَا إِذَا تَرَكَ ابْنُ بِنْتٍ بِنْتِ

بِنْتٍ وَبِنْتِ ابْنٍ بِنْتِ بِنْتٍ وَبِنْتِي بِنْتِ ابْنٍ بِنْتِ بِنْتِ هَذِهِ الصُّورَةُ

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بِنْتٌ	بِنْتٌ	بِنْتٌ
بِنْتٌ	بِنْتٌ	بِنْتٌ
بِنْتٌ	ابْنٌ	بِنْتٌ
ابْنَتَيْنِ	بِنْتٌ	بِنْتَيْنِ

عِنْدَ أَبِي يُوسُفَ رَحِمَهُ اللَّهُ يَقْسَمُ الْهَالُ بَيْنَ الْفُرُوعِ أَسْبَاعًا

بِاعْتِبَارِ أَبْدَانِهِمْ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللَّهُ يَقْسَمُ الْهَالُ عَلَيَّ

أَعْلَى الْخِلَافِ أَعْنِي فِي الْبَطْنِ الثَّانِي أَسْبَاعًا بِاعْتِبَارِ

عَدَدِ الْفُرُوعِ فِي الْأَصُولِ فَعِنْدَهُ أَرْبَعَةُ أَسْبَاعٍ لِبِنْتِي بِنْتِ

ابْنِ الْبِنْتِ إِذْ هِيَ نَصِيبُ جَدِّهَا وَثَلَاثَةُ أَسْبَاعٍ لَهُ وَهُوَ

نَصِيبُ الْبِنْتَيْنِ يَقْسَمُ عَلَيَّ وَلَدَيْهَا أَعْنِي فِي الْبَطْنِ

الثَّلَاثِ أَنْصَافًا نَصُّهُ لِبِنْتِ ابْنِ بِنْتِ الْبِنْتِ نَصِيبُ

الْأَسْوَلُ أَعْنِي فِي الْبَطْنِ الثَّانِي اِنْلَا تَأْتِلْنَاهُ لِبِمَتِ ابْنِ

الْبِنْتُ نَصِيبُ أُمِّهَا وَتِلْكَ لِابْنِ بِنْتِ الْبِنْتِ نَصِيبُ أُمِّهِ

وَكَذَلِكَ عِندَ مُحَمَّدٍ رَحِمَهُ اللَّهُ إِنْ كَانَ أَوْلَادُ الْبَنَاتِ

مُخْتَلَفَةٌ يُقَسِّمُ الْبَالُ عَلَى أَوَّلِ بَطْنٍ اخْتَلَفَ فِي الْأَصُولِ

ثُمَّ يُجْعَلُ الذَّكُورُ طَائِفَةً وَالْإِنَاثُ طَائِفَةً أُخْرَى بَعْدَ الْقِسْمَةِ

فَمَا أَصَابَ الذِّكُورَ يُجْمَعُ وَيُنْقَسَمُ عَلَيَّ أَعْلَى الْخِلَافِ الَّذِي

وَقَعَ فِي أَوْلَادِهِمْ وَكَذَلِكَ مَا أَصَابَ الْأُنثَىٰ وَهَكَذَا يَعْبُدُ

إِلَى أَنْ يَنْتَهِيَ بِهَذِهِ الصُّورَةُ

[illegible]

وَكَذَلِكَ

الْوَارِثِ أُولَى مِنْ وَلَدِ ذَوِي الْأَرْحَامِ كَبْنِ بْنِ ابْنِ  
 أُولَى مِنْ ابْنِ بِنْتِ الْبِنْتِ وَإِنْ اسْتَوَتْ دَرَجَاتُهُمْ وَلَمْ يَكُنْ  
 قِيَمُهُمْ وَلَدُ الْوَارِثِ أَوْ كَانَ كُتْلُهُمْ وَلَدُ الْوَارِثِ فَعِنْدَ  
 أَبِي يُوسُفَ رَحِمَهُ اللَّهُ وَالْحَسَنُ بْنُ زِيَادٍ يُعْتَبَرُ أَبْدَانُ  
 الْغُرُوعِ وَيُقَسَّمُ الْبَالُ عَلَيْهِمْ سَوَاءً اتَّفَقَتْ صِفَةُ الْأَصُولِ  
 فِي الذَّكُورَةِ وَالْأُنثَى أَوْ اخْتَلَفَتْ وَمُحَمَّدٌ رَحِمَهُ اللَّهُ  
 يُعْتَبَرُ أَبْدَانُ الْغُرُوعِ إِنْ اتَّفَقَتْ صِفَةُ الْأَصُولِ مُوَافِقًا لَهَا  
 وَيُعْتَبَرُ أَبْدَانُ الْأَصُولِ إِنْ اخْتَلَفَتْ صِفَاتُهُمْ وَيُعْطَى الْغُرُوعُ  
 مِيرَاثُ الْأَصُولِ مُخَالَفًا لَهَا كَمَا إِذَا تَرَكَ ابْنُ بِنْتٍ وَبِنْتُ بِنْتٍ  
 عِنْدَ هَذَا الْبَالِ بَيْنَهُمَا لِلدَّكَرِ مِثْلُ حَقِّ الْأُنثَيَيْنِ بِإِعْتِبَارِ  
 الْأَبْدَانِ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللَّهُ كَذَلِكَ لِأَنَّ صِفَةَ الْأَصُولِ  
 مُتَّفِقَةٌ وَلَوْ تَرَكَ بِنْتُ ابْنِ بِنْتٍ وَابْنُ بِنْتِ بِنْتٍ عِنْدَ هَذَا  
 الْبَالِ بَيْنَ الْغُرُوعِ ثَلَاثًا بِإِعْتِبَارِ الْأَبْدَانِ ثَلَاثًا لِلدَّكَرِ  
 وَثَلَاثَةً لِلْأُنثَى وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللَّهُ عَلَيْهِ الْبَالُ بَيْنَ



يَتَنَبَّيْ إِلَى جَدِّي الْبَيْتِ أَوْ جَدَّتَيْهِ وَهِيَ الْعَبَاتُ وَالْأَعْمَامُ  
لِأُمِّ وَالْأَخْوَالِ وَالْخَالَاتِ فَهَؤُلَاءِ وَكُلُّ مَنْ يَدُلِّي إِلَى الْبَيْتِ  
بِهِمْ مِنْ ذَوِي الْأَرْحَامِ رَوَى أَبُو سَلَيْبَانَ عَنْ مُحَمَّدِ ابْنِ  
الْحُسَيْنِ عَنْ أَبِي حَنِيفَةَ رَحِمَهُمُ اللَّهُ إِنَّ أَقْرَبَ الْأَصْنَافِ  
الصَّنْفَ الثَّانِي وَإِنْ عَلَوْ ثُمَّ الْأَوَّلُ وَإِنْ سَقَلُوا ثُمَّ الثَّالِثُ  
وَإِنْ نَزَلُوا ثُمَّ الرَّابِعُ وَإِنْ بَعْدَ وَارَوَى أَبُو يُونُسَ وَالْحَسَنُ  
بْنُ زِيَادٍ عَنْ أَبِي حَنِيفَةَ رَحِمَهُمُ اللَّهُ أَنَّ أَقْرَبَ الْأَصْنَافِ  
الْأَوَّلُ ثُمَّ الثَّانِي ثُمَّ الثَّالِثُ ثُمَّ الرَّابِعُ كَثَرَتْ تَبَيُّ الْعَصَبَاتِ  
وَهُوَ الْبَاخُوذُ لِلْفَتَوَى وَعِنْدَهَا الصَّنْفُ الثَّالِثُ مُقَدَّمٌ  
عَلَى الْجَدَّاتِ الْأُمِّ لِأَنَّ عِنْدَهَا كُلَّ وَاحِدٍ مِنْهُمْ أَوْلَى مِنْ  
فَرْعِهِ وَفَرْعُهُ أَوْلَى مِنْ أَصْلِهِ

### فَصْلٌ فِي الصَّنْفِ الْأَوَّلِ

أُولَاهُمْ بِالْبَيَرَاتِ أَقْرَبُهُمْ إِلَى الْبَيْتِ كَبْنَتِ الْبِنْتِ فَإِنَّهَا  
أَوْلَى مِنْ بِنْتِ بِنْتِ الْإِبْنِ وَإِنْ اسْتَوَوْا فِي الدَّرَجَةِ فَوَلَدُ  
الْوَارِثِ

١٥  
ثَالِثٌ أَوْ رَابِعٌ فَاجْعَلِ الْبَلَّغُ الثَّانِي مَقَامَ الْأَوَّلِ وَالثَّالِثُ  
مَقَامَ الثَّانِي فِي الْعَمَلِ ثُمَّ فِي الرَّابِعِ وَالْخَامِسِ كَذَلِكَ  
إِلَى غَيْرِ النَّهَايَةِ

### بَابُ ذَوِي الْأَرْحَامِ

وَذُو الرِّحْمِ هُوَ كُلُّ قَرِيبٍ لَيْسَ بِيَدِي سَهْمٍ وَلَا عَصَبَةٍ كَانَتْ  
عَاقِبَةُ الصَّحَابَةِ يَرَوْنَ تَوْرِيثَهُ ذُو الْأَرْحَامِ وَبِهِ قَالَ أَصْحَابُنَا  
وَمَنْ تَابَعَهُمْ رَحِمَهُمُ اللَّهُ تَعَالَى وَقَالَ زَيْدُ بْنُ ثَابِتٍ رَضِيَ اللَّهُ  
عَنْهُ لَا مِيرَاثَ لِدِ ذَوِي الْأَرْحَامِ وَيُوضَعُ الْهَالُ فِي بَيْتِ الْهَالِ  
وَبِهِ قَالَ مَالِكٌ وَالشَّافِعِيُّ رَحِمَهَا اللَّهُ تَعَالَى وَذُو الْأَرْحَامِ  
أَصْنَافُ أَرْبَعَةٍ الصِّنْفُ الْأَوَّلُ يَنْتَهِي إِلَى الْهَيْتِ وَهُمْ أَوْلَادُ  
الْبَنَاتِ وَأَوْلَادُ بَنَاتِ الْأَبْنِ وَالصِّنْفُ الثَّانِي يَنْتَهِي إِلَيْهِمُ  
الْهَيْتُ وَهُمْ الْأَجْدَادُ السَّاطِطُونَ وَالْجَدَّاتُ السَّاطِطَاتُ  
وَالصِّنْفُ الثَّالِثُ يَنْتَهِي إِلَى أَبَوَيْ الْهَيْتِ وَهُمْ أَوْلَادُ  
الْأَخَوَاتِ وَبَنَاتُ الْأَخَوَةِ وَبَنَاتُ الْأَخَوَةِ لِأُمِّ وَالصِّنْفُ الرَّابِعُ

وَأَمَّ فَبَاتَ الزَّوْجُ قَبْلَ الْقِسْبَةِ عَنْ امْرَأَةٍ وَأَبَوَيْنِ ثُمَّ مَاتَ  
الْبِنْتُ عَنْ ابْنَيْنِ وَبِنْتٍ وَجَدَّةٍ ثُمَّ مَاتَ الْجَدَّةُ عَنْ زَوْجٍ  
وَأَخَوَيْنِ الْأَسْلُ فِيهِ أَنْ تَصَحَّحَ مَسْئَلَةُ الْبَيْتِ الْأَوَّلِ وَتُعْطَى  
سِهَامُ كُلِّ وَارِثٍ مِنْ هَذَا التَّصْحِيحِ ثُمَّ تَصَحَّحَ مَسْئَلَةُ  
الْبَيْتِ الثَّانِي وَتَنْظُرُ بَيْنَ مَا فِي يَدِهِ مِنَ التَّصْحِيحِ الْأَوَّلِ  
وَبَيْنَ التَّصْحِيحِ الثَّانِي إِلَى ثَلَاثَةِ أَحْوَالٍ فَإِنْ اسْتَقَامَ بِسَبَبِ  
الْبَهَائِلَةِ مَا فِي يَدِهِ مِنَ التَّصْحِيحِ الْأَوَّلِ عَلَى التَّصْحِيحِ  
الثَّانِي فَلَا حَاجَةَ إِلَى الضَّرْبِ وَإِنْ لَمْ يَسْتَقَمْ فَانْظُرْ إِنْ كَانَ  
بَيْنَهُمَا مُوَافَقَةٌ فَاضْرِبْ وَفَقَ التَّصْحِيحِ الثَّانِي فِي جَمِيعِ  
التَّصْحِيحِ الْأَوَّلِ وَإِنْ كَانَ بَيْنَهُمَا مَبَايِنَةٌ فَاضْرِبْ كُلَّ  
التَّصْحِيحِ الثَّانِي فِي كُلِّ التَّصْحِيحِ الْأَوَّلِ فَالْبَلْغُ مَخْرَجُ  
الْمَسْئَلَتَيْنِ فَسِهَامُ وَرَثَةِ الْبَيْتِ الْأَوَّلِ يُضْرَبُ فِي الْبُضْرُوبِ  
أَعْنِي فِي التَّصْحِيحِ الثَّانِي أَوْ فِي وَقْفِهِ وَسِهَامُ وَرَثَةِ الْبَيْتِ  
الثَّانِي يُضْرَبُ فِي كُلِّ مَا فِي يَدِهِ أَوْ فِي وَقْفِهِ وَإِنْ مَاتَ  
ثَالِثُ

صَحِيحٌ فَاضْرِبْ مَخْرَجَ الثَّلَاثِ فِي أَصْلِ الْهَيْسَلَةِ فَإِنْ تَرَكْتَ

جَدًّا وَزَوْجًا وَبَنَاتًا وَأُمًّا وَأَخْتًا لَابٍ وَأُمًّا لَابٍ فَالْسُّدُّ سٌ خَيْرٌ

لِلْجَدِّ وَتَعُولُ الْهَيْسَلَةُ إِلَى ثَلَاثَةِ عَشْرَ وَلَا شَيْءَ لِلْأَخْتِ

وَأَعْلَمُ أَنَّ زَيْدَ بْنَ ثَابِتٍ رَضِيَ اللَّهُ عَنْهُ لَا يَجْعَلُ الْأَخْتَ

لَابٍ وَأُمًّا لَابٍ صَاحِبَةً فَرَضَ مَعَ الْجَدِّ الْإِنْفَى الْهَيْسَلَةَ

الْأَكْدَرِيَّةَ وَهِيَ زَوْجٌ وَأُمٌّ وَجَدٌّ وَأَخْتُ لَابٍ وَأُمُّ لَابٍ لِلزَّوْجِ

النِّصْفُ وَلِلْأُمِّ الثَّلَاثُ وَلِلْجَدِّ السُّدُّ وَلِلْأَخْتِ النِّصْفُ

ثُمَّ يَضُمُّ الْجَدُّ نَصِيبَهُ إِلَى نَصِيبِ الْأَخْتِ فَيُقَسَّمَانِ لِلذَّكَرِ

مِثْلَ حَظِّ الْأُنثَيَيْنِ لِأَنَّ الْهَيْسَلَةَ خَيْرٌ لِلْجَدِّ أَصْلُهَا مِنْ سِتَّةٍ

وَتَعُولُ إِلَى تِسْعَةٍ وَتَصَحَّحَ مِنْ سَبْعَةٍ وَعَشْرِينَ إِنَّهَا سُبَيْتٌ

أَكْدَرِيَّةٌ لِأَنَّهَا وَاتِعَةٌ فِي أَمْرَةٍ مِنْ بَنِي أَكْدَرٍ وَلَوْ كَانَ

مَكَانَ الْأَخْتِ أَخٌ أَوْ أَخْنَانٌ فَلَا عَوْلَ وَلَا أَكْدَرِيَّةَ

### بَابُ الْهَيْسَلَةِ

وَلَوْ صَارَ يَعْصُ الْأَصْبَاءُ مِيرَاثًا قَبْلَ الْقِسْمَةِ كَزَوْجٍ وَبَنَاتٍ

أَنْ يُجْعَلَ الْجَدُّ فِي الْقِسْمَةِ كَأَحَدٍ مِنَ الْإِخْوَةِ وَ  
 بَدْوِ الْعَلَاتِ يَدْخُلُونَ فِي الْقِسْمَةِ مَعَ بَنِي الْأَعْيَانِ  
 إِضْرَارًا لِلْجَدِّ فَإِذَا اخْتَلَفَ الْجَدُّ نَصِيبَهُ فَبَدْوِ الْعَلَاتِ يُخْرِجُونَ  
 مِنَ الْبَيْنِ خَائِبِينَ بِغَيْرِ شَيْءٍ وَالْبَاقِي لِبَنِي الْأَعْيَانِ  
 إِلَّا إِذَا كَانَتْ مِنْ بَنِي الْأَعْيَانِ أُخْتُ وَاحِدَةٌ أَخَذَتْ  
 فَرَضَهَا أَغْنَى الْكُلَّ يَعْدُ نَصِيبُ الْجَدِّ فَإِنْ بَقِيَ شَيْءٌ  
 فَلِبَنِي الْعَلَاتِ وَإِلَّا فَلَا شَيْءَ لَهُمْ وَذَلِكَ كَجَدِّ وَأُخْتِ  
 لِأَبٍ وَأُمٍّ وَأُخْتَيْنِ لِأَبٍ فَبَقِيَ لِلأُخْتَيْنِ لِأَبٍ عَشْرُ أِهَالٍ وَ  
 تَصَحَّحَ مِنْ عَشْرِينَ وَلَوْ كَانَتْ فِي هَذِهِ الْهَيْسَلَةِ أُخْتُ لِأَبٍ  
 لَمْ يَبْقَ لَهَا شَيْءٌ وَإِنْ اخْتَلَطَ بِهِمْ دُوسَمٌ فَلِلْجَدِّ هَهُنَا أَفْضَلُ  
 أَلَمْ يُورِثَ الثَّلَاثَةَ بَعْدَ فَرَضِ ذِي سَهْمٍ أُمَّ الْهَاسِئَةِ كَزَوْجٍ  
 وَجَدٍّ وَأَخٍ وَأُمَّ ثَلَاثُ مَا يَبْقَى كَجَدٍّ وَجَدَّةٍ وَأَخَوَيْنِ وَأُخْتِ  
 لِأَبٍ وَأُمٍّ وَأُمَّ سُدُسُ جَمِيعِ الْهَالِ كَجَدٍّ وَجَدَّةٍ وَبَنَاتٍ وَأَخَوَيْنِ  
 وَإِذَا كَانَ ثَلَاثُ الْبَاقِي خَيْرًا لِلْجَدِّ وَلَيْسَ لِلْبَاقِي ثَلَاثُ

صَحِيحٌ

مُخْرَجٍ فَرَضَ مِنْ لَا يَرُدُّ عَلَيْهِ فَالْبَلَّغُ مُخْرَجٌ فَرَضَ  
 الْغَرِيقَيْنِ كَأَرْبَعِ زَوْجَاتٍ وَتَسَعِ بَنَاتٍ وَسِتِّ جَدَّاتٍ  
 ثُمَّ أَضْرَبَ سَهَامٌ مِنْ لَا يَرُدُّ عَلَيْهِ فِي مَسْئَلَةٍ مِنْ يَرُدُّ عَلَيْهِ  
 وَسَهَامٌ كُلٌّ مِنْ يَرُدُّ عَلَيْهِ فَيَبَا بَقِيَ مِنْ مُخْرَجٍ فَرَضَ  
 مِنْ لَا يَرُدُّ عَلَيْهِ فَأَنْكَسَرَ عَلَيَّ الْبَعْضُ صَحَّحَ  
 الْمَسْئَلَةَ بِالْأَصُولِ الْهَدْيُ كُورَةٌ

### بَابُ مِقَاسَةِ الْجَدِّ

قَالَ أَبُو بَكْرٍ الصِّدِّيقُ رَضِيَ اللَّهُ عَنْهُ وَمَنْ تَابَعَهُ مِنْ  
 الصَّحَابَةِ بَنُوا الْأَعْيَانَ وَبَنُوا الْعَلَاتِ لَا يَرِثُونَ مَعَ الْجَدِّ وَهَذَا  
 قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ وَبِهِ يُقْتَنَى وَقَالَ زَيْدُ بْنُ ثَابِتٍ  
 يَرِثُونَ مَعَ الْجَدِّ وَهُوَ قَوْلُهَا وَقَوْلُ مَالِكٍ وَالشَّافِعِيِّ  
 رَحِمَهُمُ اللَّهُ تَعَالَى وَعِنْدَ زَيْدِ بْنِ ثَابِتٍ رَحِمَهُ اللَّهُ تَعَالَى  
 عَلَيْهِ لِلْجَدِّ مَعَ بَنِي الْأَعْيَانِ وَالْعَلَاتِ أَفْضَلُ الْأَمْرِ  
 مِنَ الْبَقَا سَبَّةٍ وَمِنْ ثَلَاثِ جَمِيعِ الْبَالِ وَتَعْسِيرُ الْبَقَا سَبَّةٍ

إِنْ أَكَانَ فِيهَا نِصْفٌ وَسُدُسٌ أَوْ مِنْ خَمْسَةٍ إِنْ أَكَانَ فِيهَا  
 ثَلَاثَانِ وَسُدُسٌ أَوْ نِصْفٌ وَسُدُسَانِ أَوْ نِصْفٌ وَثَلَاثٌ وَالثَّالِثُ  
 أَنْ يَكُونَ مَعَ الْأَوَّلِ مَنْ لَا يَرُدُّ عَلَيْهِ فَاُعْطِ فَرَضَ مَنْ لَا يَرُدُّ  
 عَلَيْهِ مِنْ أَقَلِّ مَخَارِجِهِ فَإِنْ اسْتَقَامَ الْبَاقِي عَلَى رُؤُسِ  
 مَنْ يَرُدُّ عَلَيْهِ فِيهَا كَزَوْجٍ وَثَلَاثِ بَنَاتٍ وَإِنْ لَمْ يَسْتَعْمِ فَاضْرِبْ  
 وَفَرُوسَهُمْ فِي مَخْرَجِ فَرَضِ مَنْ لَا يَرُدُّ عَلَيْهِ إِنْ وَافَقَ  
 رُوسَهُمُ الْبَاقِي كَزَوْجٍ وَثَلَاثِ بَنَاتٍ وَالْأَضْرِبُ بِكُلِّ  
 عَدَدِ رُوسِهِمْ فِي مَخْرَجِ فَرَضِ مَنْ لَا يَرُدُّ عَلَيْهِ فَانْبَلِغْ مِنْهَا  
 تَحِجَّ الْمَسْئَلَةِ وَالرَّابِعُ أَنْ يَكُونَ مَعَ الثَّانِي مَنْ لَا يَرُدُّ عَلَيْهِ  
 فَاقْسِمْ مَا بَقِيَ مِنْ مَخْرَجِ فَرَضِ مَنْ لَا يَرُدُّ عَلَيْهِ عَلَى  
 مَسْئَلَةٍ مَنْ يَرُدُّ عَلَيْهِ فَإِنْ اسْتَقَامَ الْبَاقِي فِيهَا وَهَذَا فِي  
 صُورَةٍ وَاحِدَةٍ وَهِيَ أَنْ يَكُونَ لِلزَّوْجَاتِ الرَّبْعُ وَيَكُونَ  
 الْبَاقِي بَيْنَ أَهْلِ الرَّدِّ أَسْلَافًا كَزَوْجَةٍ وَجَدَّةٍ وَاخْتَيْنِ  
 لِأُمٍّ وَإِنْ لَمْ يَسْتَعْمِ فَاضْرِبْ جَمِيعَ مَسْئَلَةٍ مَنْ يَرُدُّ عَلَيْهِ فِي  
 مَخْرَجِ

<sup>١٢</sup>  
وَهُوَ بِهَا فَضْلٌ عَنْ فَرَضِ ذَوِي الْفَرُوضِ وَلَا مُسْتَحَقٌّ لَهُ  
يَرِدُ ذَلِكَ عَلَيَّ ذَوِي الْفَرُوضِ بَعْدَ رَحُوقِهِمْ إِلَّا عَلَيَّ  
النَّزُوجِينَ وَهُوَ قَوْلُ عَامَّةِ الصَّحَابَةِ كَعَلِيٍّ وَمَنْ تَابَعَهُ  
رَضِيَ اللَّهُ عَنْهُمْ وَبِهِ أَخَذَ أَصْحَابُنَا رَحِمَهُمُ اللَّهُ وَقَالَ زَيْدٌ  
بُنْتُ ثَابِتٍ لَا يَرِدُ الْفَاضِلُ بَلْ هُوَ لِبَيْتِ الْهَالِ وَبِهِ أَخَذَ  
عُرْوَةُ وَالزُّهْرِيُّ وَمَالِكٌ وَالشَّافِعِيُّ رَحِمَهُمُ اللَّهُ تَعَالَى  
ثُمَّ مَسَّيْلُ الْبَابِ اِقْتِسَامِ أَرْبَعَةِ أَحْدِهَا إِنْ يَكُونُ فِي  
الْبَسْلَةِ جِنْسٌ وَاحِدٌ مِمَّنْ يَرِدُ عَلَيْهِ عِنْدَ عَدَمِ مَنْ لَا يَرِدُ  
عَلَيْهِ فَاجْعَلِ الْبَسْلَةَ مِنْ رُؤُسِهِمْ كَمَا إِذَا أَتَرَكَ الْبَيْتُ  
بِثْنَيْنِ أَوْ اخْتَيْنِ أَوْ جَدَّتَيْنِ فَاجْعَلِ الْبَسْلَةَ مِنْ اثْنَيْنِ  
وَالثَّانِي إِذَا اجْتَبَعَ فِي الْبَسْلَةِ جِنْسَانِ أَوْ ثَلَاثَةَ أَجْنَاسٍ  
مِمَّنْ يَرِدُ عَلَيْهِ عِنْدَ عَدَمِ مَنْ لَا يَرِدُ عَلَيْهِ فَاجْعَلِ الْبَسْلَةَ  
مِنْ سَهْمِهِمْ أَعْنَى مِنْ اثْنَيْنِ إِنْ كَانَ فِي الْبَسْلَةِ سُدَّسَانِ  
أَوْ مِنْ ثَلَاثَةٍ إِنْ كَانَ فِيهَا ثَلَاثُ سُدُوسٍ أَوْ مِنْ أَرْبَعَةٍ



وَقَدْ التَّرِكَةَ ثُمَّ اقْسَمَ الْبَلَّغُ الْحَاصِلَ عَلَيَّ وَقَدْ  
 الْهَسْلَةَ اِنْ كَانَ بَيْنَ التَّرِكَةِ وَالْهَسْلَةِ مُوَافَقَةٌ وَاِنْ كَانَ  
 بَيْنَهُمَا مَبَايَنَةٌ فَاضْرِبْ فِي كُلِّ التَّرِكَةِ ثُمَّ اقْسَمِ الْحَاصِلَ  
 عَلَيَّ جَمِيعَ التَّصْحِيحِ الْهَسْلَةَ فَالْخَارِجُ نَصِيبُ ذَلِكَ  
 الْغَرِيقِ فِي الْوَجْهَيْنِ وَأَمَّا فِي قَضَاءِ الدَّيُونِ فَدَيْنُ  
 كُلِّ غَرِيمٍ بِمَنْزِلَةِ التَّصْحِيحِ

### فصل في التَّخَارُجِ

مَنْ صَالَحَ عَلَيَّ شَيْءٌ مِنَ التَّرِكَةِ فَاطْرَحَ سَهَامَهُ مِنَ  
 التَّصْحِيحِ ثُمَّ اقْسَمَ مَا فِي التَّرِكَةِ عَلَيَّ سَهَامَ الْبَاتِنِ  
 كَزَوْجٍ وَإِمٍّ وَعَمٍّ فَصَالَحَ الزَّوْجَ عَلَيَّ مَا فِي ذِمَّتِهِ لِلزَّوْجَةِ  
 مِنَ النِّكَاحِ وَخَرَجَ مِنَ الْبَيْنِ فَيُقَسَّمُ مَا فِي التَّرِكَةِ بَيْنَ  
 الْأُمِّ وَالْعَمِّ أَنْ لَا تَبْقُدَ سَهَامَهُمَا وَحَ يَكُونُ سَهَامُ الْأُمِّ وَ  
 سَهْمُ وَاحِدٍ لِلْعَمِّ

### بَابُ الرَّدِّ الرَّدِّ ضِدُّ الْعَوْلِ

وَهُوَ

عليهم البضروب فالحاصل نصيب كل واحد من احدى

ذلك الغريق ووجه آخر وهو طريق النسبة وهو اوضح

فهو ان ينسب سهام كل غريق من اصل المسئلة الي

عدد رؤسهم مفردها ثم يعطى ببطل تلك النسبة من

البضروب لكل واحد من احدى ذلك الغريق

فصل في قسمة التركات بين الورثة والغرماء

ان كان بين التركة والتصحیح مباينة فاضرب سهام كل

وارث من التصحيح في جميع التركة ثم اقسام الببلغ علي

التصحیح واذا كان بين التصحيح والتركة موافقة

فاضرب سهام كل وارث من التصحيح في وفق التركة

ثم اقسام الببلغ علي وفق التصحيح فالخارج نصيب ذلك

الوارث في الوجهين هذا انما هو لمعرفة نصيب كل

فرد من الورثة واما لمعرفة نصيب كل غريق منهم

فاضرب ما كان لكل غريق من اصل المسئلة في

الْأَعْدَادِ فِي جَمِيعِ الثَّانِي ثُمَّ يُضْرَبُ مَا بَلَغَ فِي جَمِيعِ  
 الثَّلَاثِ ثُمَّ مَا بَلَغَ فِي جَمِيعِ الرَّابِعِ ثُمَّ يُضْرَبُ مَا اجْتَمَعَ  
 فِي أَصْلِ الْمَسْئَلَةِ كَأَمْرَاتَيْنِ وَسِتِّ جَدَّاتٍ وَعَشْرَةِ بَنَاتٍ  
 وَسَبْعَةِ أَعْمَامٍ

### فَصْلٌ

وَإِذَا أَرَدْتَ أَنْ تَعْرِفَ نَصِيبَ كُلِّ فَرِيقٍ مِنَ التَّصْحِيحِ  
 فَأَضْرِبْ مَا كَانَ لِكُلِّ فَرِيقٍ مِنْ أَصْلِ الْمَسْئَلَةِ فِيهَا ضَرْبَتَهُ  
 فِي أَصْلِ الْمَسْئَلَةِ فَمَا حَصَلَ كَانَ نَصِيبَ ذَلِكَ الْفَرِيقِ  
 وَإِذَا أَرَدْتَ أَنْ تَعْرِفَ نَصِيبَ كُلِّ وَاحِدٍ مِنْ أَحَادِ ذَلِكَ  
 الْفَرِيقِ مِنَ التَّصْحِيحِ فَاقْسِمِ مَا كَانَ لِكُلِّ فَرِيقٍ مِنْ  
 أَصْلِ الْمَسْئَلَةِ عَلَى عَدَدِ رُوسِهِمْ ثُمَّ اضْرِبِ الْخَارِجَ فِي  
 الْبُضْرُوبِ فَالْحَاصِلُ نَصِيبُ كُلِّ وَاحِدٍ مِنْ أَحَادِ ذَلِكَ  
 الْفَرِيقِ وَوَجْهٌ آخَرُ أَنْ تَقْسِمَ الْبُضْرُوبَ عَلَى أَيِّ شَيْءٍ  
 ثُمَّ تَضْرِبَ الْخَارِجَ فِي نَصِيبِ الْفَرِيقِ الَّذِي قَسَمْتَ  
 عَلَيْهِمْ

أَصْلُ الْهَيْسَلَةِ كَزَوْجٍ وَخَمْسِ أَخَوَاتٍ لِأَبٍ وَأُمٍّ وَأُمِّ الْأَرْبَعَةِ

فَأَحَدُهَا أَنْ يَكُونَ الْكَسْرُ عَلَى طَائِفَتَيْنِ أَوْ أَكْثَرَ وَلَكِنْ

يَبِينُ أَعْدَادُ رُوسِهِمْ مِمَّا ثَلَاثَةٌ فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَحَدُ

الْأَعْدَادِ فِي أَصْلِ الْهَيْسَلَةِ مِثْلُ سِتِّ بَنَاتٍ وَثَلَاثِ جَدَّاتٍ

وِثْلَاثَةِ أَعْمَامٍ وَالثَّانِي أَنْ يَكُونَ بَعْضُ الْأَعْدَادِ فِي بَعْضِهِ

مُتَدَاخِلًا فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَكْثَرُ الْأَعْدَادِ فِي

أَصْلِ الْهَيْسَلَةِ كَأَرْبَعِ زَوَاجَاتٍ وَثَلَاثِ جَدَّاتٍ وَاثْنِي

عَشْرَ عَمَّاتٍ وَالثَّالِثُ أَنْ يُوَافِقَ بَعْضُ الْأَعْدَادِ بَعْضًا فَالْحُكْمُ

فِيهَا أَنْ يَضْرِبَ وَتَقَفَ أَحَدُ الْأَعْدَادِ فِي جَمِيعِ الثَّانِي ثُمَّ

مَا بَلَغَ فِي وَتَقَفَ الثَّالِثُ أَنْ وَافَقَ الْبَلَغَ الثَّالِثَ وَالْأَوَّلَ

فَالْبَلَغُ فِي جَمِيعِ الثَّالِثِ ثُمَّ فِي الرَّابِعِ كَذَلِكَ ثُمَّ يَضْرِبُ

الْبَلَغُ فِي أَصْلِ الْهَيْسَلَةِ كَأَرْبَعِ زَوَاجَاتٍ وَثَنَانِي عَشْرَةَ بَنَاتٍ

وَخَمْسَ عَشْرَةَ جَدَّةً وَسِتَّةَ أَعْمَامٍ وَالرَّابِعُ أَنْ تُكُونَ الْأَعْدَادُ

مُتَبَايِنَةٌ لَا يُوَافِقُ بَعْضُهَا بَعْضًا فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَحَدُ

إِلَى الْعَشْرَةِ وَفِيهَا وَرَاءَ الْعَشْرَةِ يَتَوَاتَرُ فَقَانِ بِحُزْنٍ أَعْبَى فِي  
 أَحَدَ عَشَرَ بِحُزْنٍ مِنْ أَحَدَ عَشَرَ وَفِي خُمُسَةِ عَشَرَ بِحُزْنٍ مِنْ  
 خُمُسَةِ عَشَرَ فَاعْتَبِرْ هَذَا

### بَابُ التَّصْحِيحِ

يُحْتَاجُ فِي تَصْحِيحِ الْبَسَائِلِ إِلَى سَبْعَةِ أَصُولٍ ثَلَاثَةٌ مِنْهَا  
 بَيْنَ السَّهَامِ وَالرُّوسِ وَأَرْبَعَةٌ مِنْهَا بَيْنَ الرُّوسِ وَالرُّوسِ أَمَّا  
 الثَّلَاثَةُ فَأَحَدُهَا إِنْ كَانَ سِهَامٌ كُلِّ فَرِيقٍ مُنْقَسِبَةً عَلَيْهِمْ  
 بِلَا كُسْرٍ فَلَا حَاجَةَ إِلَى الضَّرْبِ كَأَبَوَيْنِ وَبَنَتَيْنِ وَالثَّانِي  
 هُوَ أَنْ يَنْكَسِرَ عَلَى طَائِفَةٍ وَاحِدَةٍ نَصِيبُهُمْ وَلَكِنْ بَيْنَ سَهَامِهِمْ  
 وَرُوسِهِمْ مُوَافَقَةٌ فَيَضْرَبُ وَقَدْ عَدَدَ رُوسٍ مِنْ أَنْكَسَرَ  
 عَلَيْهِمُ السَّهَامُ فِي أَصْلِ الْبَسَلَةِ وَعَوْلَهَا إِنْ كَانَتْ عَائِلَةً  
 كَأَبَوَيْنِ وَعَشْرَ بَنَاتٍ أَوْ زَوْجٍ وَأَبَوَيْنِ وَسِتِّ بَنَاتٍ وَالثَّلَاثُ  
 أَنْ يَنْكَسِرَ سَهَامُهُمْ وَلَا يَكُونُ بَيْنَ سَهَامِهِمْ وَرُوسِهِمْ مُوَافَقَةٌ  
 فَيَضْرَبُ حُ كُلِّ عَدَدٍ رُوسٍ مِنْ أَنْكَسَرَ عَلَيْهِمُ السَّهَامُ فِي  
 أَصْلِ

أَوْ نَقُولُ تَدْأْخُلُ الْعِدَدَيْنِ هُوَ أَنْ يَكُونَ أَكْثَرُ الْعِدَدَيْنِ  
 مُنْقَسِبًا عَلَيَّ الْأَقْلَ قِسْمَةً صَحِيحَةً أَوْ نَقُولُ هُوَ أَنْ زَيْدٌ عَلَيَّ  
 الْأَقْلَ مِثْلُهُ أَوْ أَمثَالُهُ فَيَسَاوِي الْأَكْثَرَ أَوْ نَقُولُ أَنْ يَكُونَ  
 الْأَقْلَ جُزْءًا الْأَكْثَرِ مِثْلَ ثَلَاثَةٍ وَتِسْعَةٍ وَتَوَافَقَ الْعِدَدَيْنِ أَنْ  
 لَا يَبْعَدَ أَقْلُهُمَا الْأَكْثَرَ وَلَكِنْ يُعَدُّ هُمَا عِدَدٌ ثَالِثٌ كَالثَّانِيَةِ  
 مَعَ الْعِشْرَيْنِ يُعَدُّ هُمَا أَرْبَعَةٌ فَهُمَا مُتَوَافِقَانِ بِالرَّبْعِ لِأَنَّ  
 الْعِدَدَ الْعَادَّ لَهُمَا مَخْرُجَ الْجُزْءِ الْوَفَقِ وَتَبَايُنُ الْعِدَدَيْنِ  
 أَنْ لَا يَبْعَدَ الْعِدَدَيْنِ الْمُخْتَلِفَيْنِ مَعَ عِدَدٍ ثَالِثٍ أَصْلًا  
 كَالثَّعْلَةِ مَعَ الْعِشْرَةِ وَطَرِيقُ مَعْرِفَةِ الْهَوَافِقَةِ وَالْمُبَايَنَةِ بَيْنَ  
 الْبِقْدَارَيْنِ الْمُخْتَلِفَيْنِ أَنْ يَنْقُصَ مِنَ الْأَكْثَرِ بِبِقْدَارِ  
 الْأَقْلِ مِنَ الْجَانِبَيْنِ مَرَّةً أَوْ مَرَارًا حَتَّى اتَّفَقَا فِي دَرَجَةٍ  
 وَاحِدَةٍ فَإِنْ اتَّفَقَا فِي وَاحِدٍ فَلَا وَفَقَ بَيْنَهُمَا وَإِنْ اتَّفَقَا فِي  
 عِدَدٍ فَهُمَا مُتَوَافِقَانِ فِي ذَلِكَ الْعِدَدِ فَنَحْنُ الْاِثْنَيْنِ  
 بِالنِّصْفِ وَفِي الثَّلَاثَةِ بِالثُّلُثِ وَفِي الْأَرْبَعَةِ بِالرَّبْعِ هَكَذَا

الْعَوْلُ أَنْ يُزَادَ عَلَيَّ الْمَخْرَجُ شَيْءٌ مِنْ أَجْزَائِهِ إِذَا ضَاقَ  
 الْمَخْرَجُ عَنْ فَرْضٍ أَعْلَمَ أَنَّ مَجْبُوعَ الْمَخَارِجِ سَبْعَةٌ أَرْبَعَةٌ  
 مِنْهَا لَا تَعُولُ وَهِيَ الْإِثْنَانِ وَالثَّلَاثَةُ وَالْأَرْبَعَةُ وَالْثَّانِيَّةُ  
 وَثَلَاثَةٌ مِنْهَا قَدْ تَعُولُ أَمَّا السَّيِّئَةُ فَتَعُولُ إِلَى عَشْرٍ وَتَرَاوُشَعَا  
 وَأَمَّا اِثْنِي عَشَرَ فَرَبِّي تَعُولُ إِلَى سَبْعَةٍ عَشْرٍ وَتَرَاوُشَعَا  
 وَأَمَّا أَرْبَعَةٌ وَعَشْرُونَ فَاتِّهَا تَعُولُ إِلَى سَبْعَةٍ وَعَشْرِينَ عَوْلًا  
 وَاحِدًا فِي الْبَسْئَةِ الْبُسْرِيَّةِ وَهِيَ أَمْرَاءُ وَبَيْتَانِ وَأَبْوَانِ  
 وَلَا يُزَادُ عَلَيَّ هَذَا إِلَّا عِنْدَ ابْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ  
 فَإِنْ عِنْدَهُ تَعُولُ أَرْبَعَةٌ وَعَشْرُونَ إِلَى إِحْدَى وَثَلَاثِينَ  
 كَأَمْرَاءَ وَأُمَّ وَاحْتَيْنِ لِأَبٍ وَأُمَّ وَاحْتَيْنِ لِأُمِّ وَأَبْنٍ مُحْرَمٍ

بَابُ مَعْرِفَةِ الثَّابِتِ وَالتَّذَاخُلِ

وَالْتَوَاقُفِ وَالتَّبَايُنِ بَيْنَ الْعَدَدَيْنِ

ثَبَاتُ الْعَدَدَيْنِ كَوْنُ أَحَدٍ هَبًا مَسَاوِيًا لِلْآخَرِ  
 وَتَذَاخُلُ الْعَدَدَيْنِ أَنْ يُعَدَّ أَحَدُهُمَا الْأَكْثَرَ أَيْ يُغْنِيهِ

أَوْ تَعُولُ

تُعَالِي نَوْعَانِ الْأَوَّلُ النِّصْفُ وَالرَّبْعُ وَالثَّانِي وَالثَّانِي

الثَّلَاثَانِ وَالثَّلَاثُ وَالسُّدُسُ عَلَى التَّنْصِيفِ وَالتَّضْعِيفِ

فَإِذَا جَاءَ فِي الْمَسَائِلِ مِنْ هَذِهِ الْقُرُوضِ أَحَادٌ أَحَادٌ

فَمُخْرَجُ كُلِّ فَرْضٍ سَبْعَةُ إِلَّا النِّصْفُ فَإِنَّهُ مِنَ الْاِثْنَيْنِ

كَالرَّبْعِ مِنْ أَرْبَعَةٍ وَالثَّانِي مِنْ ثَبَانِيَةٍ وَالثَّلَاثُ مِنْ

ثَلَاثَةٍ وَإِذَا جَاءَ مِثْنِي أَوْ ثَلَاثَ وَهَبَا مِنْ نَوْعٍ وَاحِدٍ فَكُلُّ

عَدَدٍ يَكُونُ مَخْرَجًا لِحِزْبٍ فَذَلِكَ الْعَدَدُ أَيْضًا مَخْرَجٌ

لِضِعْفِ ذَلِكَ الْحِزْبِ وَلِضِعْفِ ضِعْفِهِ كَالسَّتَةِ هِيَ

مَخْرَجُ السُّدُسِ وَلِضِعْفِهِ وَإِذَا اخْتَلَطَ النِّصْفُ مِنَ النُّوعِ

الْأَوَّلِ بِكُلِّ الثَّانِي أَوْ بَعْضِهِ فَهُوَ مِنْ سِتَّةٍ وَإِذَا اخْتَلَطَ

الرَّبْعُ بِكُلِّ الثَّانِي أَوْ بَعْضِهِ فَهُوَ مِنْ اِثْنَيْ عَشْرٍ وَإِذَا

اخْتَلَطَ الثَّانِي بِكُلِّ الثَّانِي أَوْ بَعْضِهِ فَهُوَ مِنْ أَرْبَعَةٍ وَ

عِشْرِينَ

بَابُ الْعَوْلِ

بَابُ الْعَوْلِ

بَابُ الْعَوْلِ



وَالْأَبُ وَالزَّوْجُ وَالْبِنْتُ وَالْأُمُّ وَالزَّوْجَةُ وَفَرِيقٌ يَرْتُونَ  
بِحَالٍ وَيُحْجِبُونَ بِحَالٍ وَهَذَا مَبْنِيٌّ عَلَى أَصْلَيْنِ أَحَدُ  
هُمَا هَوَانٌ كُلُّ مَنْ يَدُّ لِي إِلَى السَّبَبِ بِشَخْصٍ لَا يَرِثُ مَعَ  
وُجُودِ ذَلِكَ الشَّخْصِ كَابْنِ الْإِبْنِ مَعَ الْإِبْنِ سِوَى  
أَوْلَادِ الْأُمِّ فَإِنَّهُمْ يَرْتُونَ مَعَهَا لِأَنَّهُ إِذَا اشْتَحَقَّهَا جَمِيعُ  
الْثَّرِكَةِ وَالثَّانِي الْأَقْرَبُ قَالَا قَرَبٌ كَمَا ذَكَرْنَا فِي  
الْعَصَبَاتِ وَالْمَحْرُومُ لَا يُحْجِبُ عِنْدَنَا وَعِنْدَ ابْنِ مَسْعُودٍ  
رَضِيَ اللَّهُ عَنْهُ يُحْجِبُ حُجْبُ النِّقْطَانِ كَالْكَافِرِ  
وَالْقَاتِلِ وَالرَّقِيقِ وَالْمُحْجُوبُ يُحْجِبُ بِالِاتِّفَاقِ  
كَالِاثْنَيْنِ مِنَ الْإِخْوَةِ وَالْأَخَوَاتِ فَصَاعِدًا مِنْ أَيِّ جِهَةٍ  
كَأَنَّا نَأْفَاءُ نَهَا لَا يَرِثَانِ مَعَ الْأَبِ لَكِنْ يُحْجِبَانِ الْأُمَّ مِنْ  
الْثَلَاثِ إِلَى السَّدْسِ

### بَابُ مَخَارِجِ الْفَرُوضِ

إِعْلَمُ أَنَّ الْفَرُوضَ السِّتَّةَ الْهَذِي كُورَةٌ فِي كِتَابِ اللَّهِ  
تَعَالَى

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 الْبُعْتَقِ وَأَبْنَهُ سُدُسُ الْوَلَدِ لِأَبٍ وَالْبَاقِي لِلْأَبْنِ  
 وَعِنْدَهُمَا كُلُّهُ لِلْأَبْنِ وَلَوْ تَرَكَ ابْنُ الْبُعْتَقِ وَجَدَّهُ  
 فَالْوَلَدُ كُلُّهُ لِلْأَبْنِ بِالْإِثْقَابِ وَمَنْ مَلَكَ ذَا رَحِمٍ مُحَرَّمٍ  
 مِنْهُ عَتَقَ عَلَيْهِ وَيَكُونُ وَلَاءُهُ لَهُ كَثَلَاثِ بَنَاتٍ لِلصَّغْرَى  
 مِثْرُونَ دِينَارًا وَلِلْكُبْرَى ثَلَاثُونَ دِينَارًا فَاشْتَرَتْ أَبَاهُهَا  
 بِالْخَبْزَيْنِ ثُمَّ مَاتَ الْأَبُ وَتَرَكَ شَيْئًا مِنَ الْهَالِ فَالْثَلَاثَانِ  
 يَمْتَنُّنَ اثْنَلَاثًا بِالْعَرَضِ وَالْيَاثِي بَيْنَ مُشْتَرَتِي الْأَبِ  
 أَخْبَاسًا ثَلَاثَةُ أَخْبَاسٍ لِلْكُبْرَى وَخُبْسَاءُ لِلصَّغْرَى  
 فَتَصِغُ مِنْ خُبْسَةٍ وَارْبَعِينَ

### بَابُ الْحَجْبِ

الْحَجْبُ عَلَى تَوْعِينَ حَجْبٍ نَقْصَانٍ وَهُوَ حَجْبٌ عَنْ سَهْمِ  
 إِلَى سَهْمٍ وَذَلِكَ لِخُبْسَةِ نَفَرٍ لِلزَّوْجَيْنِ وَالْأُمِّ وَبِنْتِ الْإِبْنِ  
 وَالْأَخْتِ لِأَبٍ وَقَدْ مَرَّيَانَهُ وَحَجْبُ حِرْمَانٍ وَالْوَرِثَةُ فِيهِ  
 فَرِيقَانِ فَرِيقٌ لَا يَحْجَبُونَ بِحَالِ الْبَتَّةِ وَهُمْ سِتَّةُ الْإِبْنِ

وَابْنُ الْأَخِ لَابٍ وَأُمُّ أُولَى مِنْ ابْنِ الْأَخِ لَابٍ وَكَذَلِكَ  
الْحُكْمُ فِي أَعْمَامِ الْبَيْتِ ثُمَّ فِي أَعْمَامِ أَبِيهِ ثُمَّ فِي أَعْمَامِ  
جَدِّهِ أَمَّا الْعَصْبَةُ بِغَيْرِ دَفْعٍ مِنْ النِّسْوَةِ وَهِيَ اللَّائِي  
فَرَضْنَهُنَّ النِّصْفَ وَالثَّلَاثَانِ يَصِرْنَ عَصْبَةً بِأَخَوَتِهِنَّ  
كَمَا ذَكَرْنَا فِي حَالَاتِهِنَّ وَمَنْ لَا فَرْضَ لَهَا مِنَ الْإِنَاثِ  
وَأَخُوهَا عَصْبَةٌ لَا تَصِيرُ عَصْبَةً بِأَخِيهَا كَالْعَمِّ وَالْعَمَّةِ  
وَأَمَّا الْعَصْبَةُ مَعَ غَيْرِهِ فُكُلُ أَنْثَى تَصِيرُ عَصْبَةً مَعَ أَنْثَى  
أُخْرَى كَالْأَخْتِ مَعَ ابْنَتِ كَمَا ذَكَرْنَا وَآخِرُ الْعُصَبَاتِ  
مَوْلَى الْعِتَاةِ ثُمَّ عَصْبَتُهُ عَلَى التَّرْتِيبِ الَّذِي ذَكَرْنَا  
لِقَوْلِهِ عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ الْوَلَاءُ لِلْحِمَّةِ كُلِّ حِمَّةٍ النَّسَبِ  
وَلَا شَيْءَ لِلْإِنَاثِ مِنْ وَرَثَةِ الْبُعْتَقِ لِقَوْلِهِ عَلَيْهِ الصَّلَاةُ  
وَالسَّلَامُ لَيْسَ لِلنِّسَاءِ مِنَ الْوَلَاءِ شَيْءٌ إِلَّا مَا اعْتَقَنَ  
أَوْ اعْتَقَ مَنْ اعْتَقَنَ أَوْ كَاتِبُنْ أَوْ كَاتِبَةٌ مَنْ كَاتِبُنْ  
أَوْ دَبْرُنْ أَوْ دَبْرٌ مَنْ دَبْرُنْ أَوْ جُرُودٌ مُعْتَقَتُهُنَّ وَلَوْ تَرَكَ أَبَا  
الْبُعْتَقِ

## بَابُ الْعَصَبَاتِ

الْعَصَبَاتُ النَّسَبِيَّةُ ثَلَاثَةٌ عَصَبَةُ بِنَفْسِهِ وَعَصَبَةُ بِغَيْرِهِ  
 وَعَصَبَةُ مَعَ غَيْرِهِ أَمَّا الْعَصَبَةُ بِنَفْسِهِ فَكُلُّ ذَكَرٍ لَا يَدُ خُلٍ  
 فِي نَسَبَتِهِ إِلَى الْبَيْتِ أَثْنِي وَهِيَ أَرْبَعَةُ أَصْنَافٍ جُزْءُ الْبَيْتِ  
 وَأَصْلُهُ وَجُزْءُ أَبِيهِ وَجُزْءُ جَدِّهِ الْأَقْرَبُ فَالْأَقْرَبُ يَرْجَحُونَ  
 بِقُرْبِ الدَّرَجَةِ أَعْنِي بِهِ أَوْلَاهُمْ بِالْبِيرَاتِ جُزْءُ الْبَيْتِ  
 أَيُّ الْبَنُونَ ثُمَّ بَنُوهُمْ وَإِنْ سَفَلُوا ثُمَّ أَسْلَهُ أَيُّ الْأَبِ ثُمَّ الْجَدُّ  
 أَبُ الْأَبِ وَإِنْ عَدَا ثُمَّ جُزْءُ أَبِيهِ أَيُّ الْأَخَوَةِ ثُمَّ بَنُوهُمْ  
 وَإِنْ سَفَلُوا ثُمَّ جُزْءُ جَدِّهِ أَيُّ الْأَعْمَامِ ثُمَّ بَنُوهُمْ وَإِنْ سَفَلُوا  
 ثُمَّ يَرْجَحُونَ بِقُوَّةِ الْقَرَابَةِ أَعْنِي بِهِ ذَا الْقَرَابَةِ بَيْنَ أَوْلِي  
 مِنْ ذِي قَرَابَةٍ وَاحِدَةٍ ذَكَرًا كَانَ أَوْ أَثْنِي لِقَوْلِهِ  
 عَلَيْهِ السَّلَامُ إِنَّ أَعْيَانَ بَنِي الْأَبِ وَالْأُمِّ يَتَوَارَثُونَ هَوْنًا  
 بَنِي الْعَلَاتِ كَالْأَخِ لِأَبٍ وَأُمِّ أَوْلَى مِنْ الْأَخِ لِأَبٍ وَالْأَخْتِ  
 لِأَبٍ وَأُمِّ إِنْ أَصَارَتْ عَصَبَةً مَعَ الْبِنْتِ أَوْلَى مِنْ الْأَخِ لِأَبٍ

فِي الدَّرَجَةِ وَيَسْقُطْنَ كُلُّهُنَّ بِالْأُمِّ وَالْأَبَوِيَّاتِ أَيْضًا .

بِالْأَبِ وَكَذَلِكَ بِالْجَدِّ الْأُمِّ وَالْأَبِ وَإِنْ عُلْتُ فَانْهَارَتْ

مَعَ الْجَدِّ لِأَنَّهَا لَيْسَتْ مِنْ قَبْلِهِ وَالْجَدَّةُ الْقُرْبَى مِنْ أَيْ

جِهَةٍ كَانَتْ تُحْجَبُ الْجَدَّةُ الْبُعْدَى مِنْ أَيْ جِهَةٍ

كَانَتْ وَارِثَةً كَانَتْ الْقُرْبَى أَوْ مُحْجُوبَةً وَإِذَا كَانَتْ

الْجَدَّةُ ذَاتَ قَرَابَةٍ وَاحِدَةٍ كَأُمِّ الْأَبِ وَالْآخِرَى ذَاتَ

قَرَابَتَيْنِ أَوْ أَكْثَرَ كَأُمِّ الْأُمِّ وَهِيَ أَيْضًا أُمُّ أَبِي الْأَبِ

بِهَذِهِ الصُّورَةِ

أُمِّ

أُمِّ

أُمِّ

أَبِ

أُمِّ

أَبِ

أُمِّ

يُقَسَّمُ السُّدُسُ بَيْنَهُمَا عِنْدَ أَبِي يُوسُفَ رَحِمَهُ اللَّهُ عَلَيْهِ

أَيْضًا فَأَبَا عَتَبَارَ الْأَبْدَانِ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللَّهُ عَلَيْهِ

أَثَلَاثًا بِأَبَا عَتَبَارَ الْجِهَاتِ

بَابُ

مَعَهُنَّ أَخَ لَابٍ فَيُعَصِّبُهُنَّ وَيَكُونُ الْبَاقِي بَيْنَهُنَّ لِلذَّكَرِ  
 مِثْلُ حِطِّ الْأُنثَيَيْنِ وَالسَّادِسَةُ أَنْ يَصْرُنَ عَصَبَةٌ مَعَ الْبَنَاتِ  
 أَوْ مَعَ بَنَاتِ الْإِبْنِ لَهَا ذَكَرُنَا وَبَنُوا الْعَيَانَ وَبَنُوا الْعَلَاتِ  
 كَلَّهُمْ يَسْقُطُونَ بِالْإِبْنِ وَابْنِ الْإِبْنِ وَإِنْ سَقَلَ وَبِالْأَبِ  
 بِالْإِنْفَاقِ وَبِالْجَدِّ عِنْدَ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى  
 وَيَسْقُطُ بَنُوا الْعَلَاتِ أَيْضًا بِالْأَخِ لَابٍ وَأُمِّ وَأَمَّا لِلْأُمِّ فَأَحْوَالُ  
 ثَلَاثُ السُّدُسِ مَعَ الْوَلَدِ أَوْ وَلَدِ الْإِبْنِ وَإِنْ سَقَلَ أَوْ مَعَ الْأُ  
 ثْنَيْنِ مِنَ الْأُخُوَّةِ وَالْأَخَوَاتِ فَصَاعِدًا مِنْ أَيِّ جِهَةٍ كَانَا  
 وَثَلَاثُ الْكُلِّ عِنْدَ عَدَمِ هَوْلَاءِ الْبُذُكُورِينَ وَثَلَاثُ مَا بَقِيَ  
 بَعْدَ فَرَضِ أَحَدِ الزَّوْجَيْنِ وَذَلِكَ فِي مَسْئَلَتَيْنِ زَوْجٍ  
 وَأَبَوَيْنِ أَوْ زَوْجَةٍ وَأَبَوَيْنِ وَلَوْ كَانَ مَكَانَ الْأَبِ جَدٌّ فَلِلْأُمِّ  
 ثَلَاثُ جَمِيعِ الْهَالِ إِلَّا عِنْدَ أَبِي يُوسُفَ رَحِمَهُ اللَّهُ فَإِنْ لَهَا  
 أَيْضًا ثَلَاثُ الْبَاقِي وَلِلْجَدَّةِ السُّدُسُ لِأُمِّ كَانَتْ أَوْ لَابٍ  
 وَاحِدَةٌ كَانَتْ أَوْ أَكْثَرًا إِنْ كُنَّ ثَابِتَاتٍ مُتَحَاذِيَّاتٍ

الْأَوَّلِ النِّصْفِ وَلِلثَوْبِطَيِ مِنَ الْغَرِيقِ الْإَوَّلِ مَعَ

مَنْ يُوَارِيهَا السُّدُسُ تَكْمِلَةً لِلثَّلَاثَيْنِ وَلَا شَيْءَ

لِلسَّغْلِيَّاتِ أَصْلًا إِلَّا أَنْ يَكُونَ مَعَهُنَّ غُلَامٌ فَيُعْصِبُهُنَّ

مَنْ كَانَتْ بِحَدِّهِ وَمَنْ كَانَتْ فَوْقَهُنَّ لَمْ يَمُرَنَّ

كَأَنَّ سَهْمَ وَيُسْقِطُ مِنْ دُونِهِ وَأَمَّا الْأَخَوَاتِ لِأَبٍ وَأُمٍّ

فَأَحْوَالُ خَمْسِ النِّصْفِ لِلوَاحِدَةِ وَالثَّلَاثَانِ لِلْإِثْنَيْنِ

فَصَاعِدًا وَمَعَ الْأَخِ لِأَبٍ وَأُمٍّ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ

فَيَصْرُنَ بِهِ عَصَبَةً لَأَسْتَوِيَهُمْ فِي الْقَرَابَةِ إِلَى الْبَيْتِ

وَلَهُنَّ الْبَاقِيَّ مَعَ الْبَنَاتِ أَوْ بَنَاتِ الْأَبْنِ لِقَوْلِهِ عَلَيْهِ الصَّلَاةُ

وَالسَّلَامُ اجْعَلُوا الْأَخَوَاتِ مَعَ الْبَنَاتِ عَصَبَةً وَالْأَخَوَاتِ

لِأَبٍ كَالْأَخَوَاتِ لِأَبٍ وَأُمٍّ وَلَهُنَّ أَحْوَالُ سَبْعِ النِّصْفِ

لِلوَاحِدَةِ وَالثَّلَاثَانِ لِلْإِثْنَيْنِ فَصَاعِدًا عِنْدَ عَدَمِ الْأَخَوَاتِ

لِأَبٍ وَأُمٍّ وَلَهُنَّ السُّدُسُ مَعَ الْأَخْتِ لِأَبٍ وَأُمٍّ تَكْمِلَةً

لِلثَّلَاثَيْنِ وَلَا يَرْتَنَنَّ مَعَ الْأَخْتَيْنِ لِأَبٍ وَأُمٍّ إِلَّا أَنْ يَكُونَ

مَعَهُنَّ

الْغَرِيفُ الْأَوَّلُ وَالْغَرِيفُ الثَّانِي وَالْغَرِيفُ الثَّلَاثُ

ابْنُ . . . . . ابْنُ . . . . . ابْنُ

ابْنُ بِنْتُ . . . . . ابْنُ . . . . . ابْنُ

ابْنُ بِنْتُ . . . . . ابْنُ بِنْتُ . . . . . ابْنُ

ابْنُ بِنْتُ . . . . . ابْنُ بِنْتُ . . . . . ابْنُ بِنْتُ

ابْنُ بِنْتُ . . . . . ابْنُ بِنْتُ

ابْنُ بِنْتُ

الْعُلَيَّا مِنَ الْغَرِيفِ الْأَوَّلِ لِأَيُّوَزِهَا أَحَدٌ وَالْوُسْطَى

مِنَ الْغَرِيفِ الْأَوَّلِ تُوَازِيهَا الْعُلَيَّا مِنَ الْغَرِيفِ الثَّانِي

وَالسُّفْلَى مِنَ الْغَرِيفِ الْأَوَّلِ تُوَازِيهَا الْوُسْطَى

مِنَ الْغَرِيفِ الثَّانِي وَالْعُلَيَّا مِنَ الْغَرِيفِ الثَّلَاثِ

وَالسُّفْلَى مِنَ الْغَرِيفِ الثَّانِي تُوَازِيهَا الْوُسْطَى

مِنَ الْغَرِيفِ الثَّلَاثِ وَالسُّفْلَى مِنَ الْغَرِيفِ الثَّلَاثِ

لِأَيُّوَزِهَا أَحَدًا أَعَرَفْتَ هَذَا فَنَقُولُ لِلْعُلَيَّا مِنَ الْغَرِيفِ



أَوْ لِدِ الْإِبْنِ وَإِنْ مَسَّغَ وَأَمَّا بِنَاتِ الصَّلْبِ فَأَحْوَالُ ثَلَاثِ  
النِّصْفِ لِلْوَحْدَةِ وَالثَّلَاثَانِ لِلْاِثْنَيْنِ فَصَاعِدًا أَوْ مَعَ الْإِبْنِ  
لِلدَّكَرِ مِثْلُ حِطِّ الْأُنثَيَيْنِ وَهُوَ يَعْصِبُهُنَّ وَبَنَاتُ الْإِبْنِ  
كَبَنَاتِ الصَّلْبِ وَلَهُنَّ أَحْوَالُ سِتِّ النِّصْفِ لِلْوَحْدَةِ  
وَالثَّلَاثَانِ لِلْاِثْنَيْنِ فَصَاعِدًا عِنْدَ عَدَمِ بَنَاتِ الصَّلْبِ  
وَلَهُنَّ السُّدُسُ مَعَ الْوَحْدَةِ الصَّلْبِيَّةِ تَكْمِلَةً لِلْثَّلَاثَيْنِ  
وَلَا يَرْتَنِّ مَعَ الصَّلْبِيَّتَيْنِ إِلَّا أَنْ يَكُونَ بِحِذَائِهِنَّ أَوْ أَسْفَلَ  
مِنْهُنَّ غُلَامٌ فَيُعَصِبُهُنَّ وَالْبَاقِي بَيْنَهُنَّ لِلدَّكَرِ مِثْلُ  
حِطِّ الْأُنثَيَيْنِ وَيَسْتُطْنَ كُلُّهُنَّ بِالْإِبْنِ وَلَوْ تَرَكَ ثَلَاثَ  
بَنَاتِ ابْنٍ بَعْضُهُنَّ أَسْفَلَ مِنْ بَعْضٍ وَثَلَاثَ بَنَاتِ ابْنٍ  
ابْنِ آخَرَ بَعْضُهُنَّ أَسْفَلَ مِنْ بَعْضٍ وَثَلَاثَ بَنَاتِ ابْنِ  
ابْنِ ابْنٍ آخَرَ بَعْضُهُنَّ أَسْفَلَ مِنْ بَعْضٍ بِهَذِهِ الصُّورَةُ

وَتَسْمَى مَسْئَلَةُ التَّشْبِيهِ

٣  
 وَالتَّعْصِيبُ مَعَاوِدُكَ مَعَ الْإِبْنَةِ أَوْ ابْنَةِ الْإِبْنِ وَإِنْ سَفَلْتَ  
 وَالتَّعْصِيبُ الْحِصْنُ وَذَلِكَ عِنْدَ عَدَمِ الْوَلَدِ وَوَلَدِ الْإِبْنِ  
 وَإِنْ سَفَلَ وَالْجَدُّ الصَّحِيحُ كَالْأَبِ إِلَّا فِي أَرْبَعِ مَسَائِلَ  
 وَسَفَلَ بِحُرِّهَا إِنْ شَاءَ اللَّهُ تَعَالَى وَيَسْقُطُ الْجَدُّ بِالْأَبِ  
 لِأَنَّ الْأَبَ أَصْلٌ فِي قَرَابَةِ الْجَدِّ إِلَى الْهَيْتِ وَأَمَّا الْأَوْلَادُ الْأُمَّ  
 فَاحْوَالُ ثَلَاثُ السُّدُسِ لِلوَاحِدِ وَالثَّلَاثُ لِلْإِثْنَيْنِ فَصَاعِدًا  
 دُكُورُهُمْ وَإِنَاثُهُمْ فِي الْقِسْمَةِ وَالْإِسْتِحْقَاقِ سَوَاءٌ  
 وَيَسْقُطُونَ بِالْوَلَدِ وَوَلَدِ الْإِبْنِ وَإِنْ سَفَلَ وَبِالْأَبِ  
 وَبِالْجَدِّ بِإِلْتِفَاقٍ وَأَمَّا لِلزَّوْجِ فَحَالَتَانِ النِّصْفُ  
 عِنْدَ عَدَمِ الْوَلَدِ وَوَلَدِ الْإِبْنِ وَإِنْ سَفَلَ وَالرُّبْعُ  
 مَعَ الْوَلَدِ أَوْ وَلَدِ الْإِبْنِ وَإِنْ سَفَلَ

### فَصْلٌ فِي النِّسَاءِ

لِلزَّوْجَاتِ حَالَتَانِ الرُّبْعُ لِلوَاحِدَةِ فَصَاعِدًا عِنْدَ عَدَمِ  
 الْوَلَدِ وَوَلَدِ الْإِبْنِ وَإِنْ سَفَلَ وَالثَّانِي مَعَ الْوَلَدِ

وَالذِّمِّيُّ أَوْ حَكْبًا كَالْبَسْتَانِ مِنَ الذِّمِّيِّ أَوِ الْخَرْيِثِيِّ  
مِنْ دَارَيْنِ مُخْتَلِفَيْنِ وَالِدَارَانِ تَخْتَلِفُ  
بِاخْتِلَافِ الْبُنْعَةِ وَالْبَلَدِ لَا نَقْطَاعَ الْعِصَةِ فِيهَا بَيْنَهُمْ  
بَابُ مَعْرِفَةِ الْفُرُوضِ وَمُسْتَحَقِّيهَا

الْفُرُوضُ الْمَعْدْرَةُ فِي كِتَابِ اللَّهِ تَعَالَى سِتَّةُ النِّصْفِ  
وَالرُّبْعِ وَالثُّلُثِ وَالْثُلُثَانِ وَالثُّلُثُ وَالسُّدُسُ عَلَي  
التَّضْعِيفِ وَالتَّنْصِيفِ وَأَصْحَابُ هَذِهِ السَّهَامِ اثْنِي عَشَرَ  
نَفَرًا أَرْبَعَةٌ مِنَ الرِّجَالِ وَهُمْ الْأَبُ وَالْجَدُّ الصَّحِيحُ  
وَأَنَّ عِلًّا وَالْأَخْلَامَ وَالزَّوْجَ وَثَنَانِ مِنَ النِّسَاءِ وَهُمَا

وَالْبِنْتُ وَبِنْتُ الْأَبْنِ وَإِنْ سَقَلَتْ وَالْأَخْتُ الْمِيرَ  
وَالْأَخْتُ لِأَبٍ وَالْأَخْتُ لِأُمٍّ وَالْأُمُّ وَالْجَدَّةُ الصَّحِيحَةُ  
وَهِيَ الَّتِي لَا يَدْخُلُ فِي نَسَبِهَا إِلَى الْبَيْتِ جَدُّ فَاسِدٌ  
أَمَّا اللَّابُ فَأَحْوَالُ ثَلَاثُ الْفَرَضِ الْبُطْلَقُ وَهُوَ السُّدُسُ  
وَذَلِكَ مَعَ الْإِبْنِ أَوْ ابْنِ الْإِبْنِ وَإِنْ سَقَلَ وَالْفَرَضُ  
وَالْتَّعْصِيبُ

بِالْكِتَابِ وَالسُّنَّةِ وَاجْتِمَاعِ الْأُمَّةِ مُتَّبِعًا بِأَصْحَابِ

الْفَرَائِضِ وَهُمْ الَّذِينَ لَهُمْ سَهَامٌ مُتَدَرَّةٌ فِي كِتَابِ

اللَّهِ تَعَالَى ثُمَّ بِالْعَصَبَاتِ مِنْ جِهَةِ النَّسَبِ وَالْعَصَبَةُ

كُلُّ مَنْ يَأْخُذُ مِنَ التَّرِكَةِ مَا أَبَقَتْهُ أَصْحَابُ الْفَرَائِضِ

وَعِنْدَ الْإِنْفِرَادِ يَحْرُزُ جَمِيعُ الْمَالِ ثُمَّ بِالْعَصَبَةِ مِنْ

جِهَةِ السَّبَبِ وَهُوَ مَوْلَى الْعِتَاقَةِ ثُمَّ عَصَبَتُهُ ثُمَّ الرَّدُّ

عَلَى ذَوِي الْقُرُوضِ النَّسَبِيَّةِ بِعَدْرِ حُقُوقِهِمْ ثُمَّ ذَوِي

الْأَرْحَامِ ثُمَّ مَوْلَى الْمَوَالَةِ ثُمَّ الْمَغْرُلَةُ بِالنَّسَبِ عَلَى الْغَيْرِ

الْجَدِّ ثُمَّ يَثْبُتُ نَسَبُهُ مِنْ ذَلِكَ الْغَيْرِ إِذَا مَاتَ الْبَعِيرُ

لَهُ عَدَمٌ فِي إِقْرَارِهِ ثُمَّ الْبُوصَى لِدَجْمِيعِ الْبَالِ ثُمَّ يَثْبُتُ الْمَالُ

فَصُلِّ فِي الْبَوَانِعِ مِنْ الْإِرْثِ

الْمَانِعُ مِنَ الْإِرْثِ أَرْبَعَةُ الرِّقَّ وَافْرًا كَانَ أَوْ نَاقِصًا وَالْقَتْلُ

الَّذِي يَتَعَلَّقُ بِهِمْ وَجُوبُ الْفِصَاصِ أَوْ الْكُفَّارَةِ وَاخْتِلَافُ

الدِّينَيْنِ وَاخْتِلَافُ الدَّارَيْنِ إِمَّا حَقِيقَةً كَالْحَرْبِ







